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SPAIN AND THE WAR

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Like other neutral nations of Europe, Spain has been tremendously affected by the war. Though she has not been brought into such close contact with the great struggle as have Holland and the Scandinavian countries, because of her distance from the battlefields and the comparative insignificance of her commercial interests, she has nevertheless felt and is still feeling a great strain, the chief characteristics of which are economic. The cost of living in Spain has increased several fold. This is due in part to the difficulty in obtaining both manfactured articles and coal for her own industries and in part to the great scarcity of agricultural products: the result of the short-sighted policy followed up to the present of exporting food products which should have been retained at home. Though possessed of a greater arable area in proportion to her population than any other country in Europe except Russia, the methods of agricultural production in Spain are wofully deficient. As a result of her own backwardness and her failure to develop either her industrial or her agricultural resources, Spain is now suffering, to a lesser degree possibly, the same inconveniences which are disturbing Germany, France and England: namely, a scarcity of food; and she does not possess the artificial stimulus which those countries have to aid in overcoming it.

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The chief reaction to the European war in Spain is, therefore, economic, and the burden falls most heavily upon those who are least able to bear it. The situation in Spain is exceedingly grave. Food riots have been frequent, news of which is kept out of the Spanish press by the censor, and all the large cities have been obliged to make public distribution of bread and money to the hungry mobs. At the present writing news comes of the inauguration of martial rule throughout Spain. Strangely enough, however, the attitude of the Spanish people toward the war is but slightly affected by these considerations. Although the cost of the necessities of life has reached almost unsupportable proportions and the coasts of Spain are blockaded by the German submarines which paralyze entirely the traffic of the Spanish mercantile marine with the rest of Europe, these facts have had little effect in giving to the average Spaniard any definite point of view or attitude toward the great struggle. He thinks little about the actualities of the situation, but leaves the entire solution of the matter to the "government," in which, evidently, he has no part. Spain is in reality as isolated and as completely set apart from the happenings of Europe as if she were a thousand miles away from it. This is, of course, partially the result of her geographical situation. The Pyrenees separate Spain from the rest of Europe, giving her no concern other than her own interior problems,—and only the governing authorities have an intelligent interest in these. Spain only becomes concerned in the affairs of Europe when they become a part of her own domestic life.

For the masses of Spain, 65 per cent of whom neither read nor write, nothing outside Spain exists. So poor are her inhabitants that their only concern is the struggle for existence. For them neither foreign nor international affairs have any interest except, perhaps, as a vague something described to them by their political or ecclesiastical leaders. So it is that in any consideration of the attitude of Spain and the war we need concern ourselves with only 35 per cent of the population; the majority of the inhabitants of the Iberian Peninsula may be entirely left out of this discussion.

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The most important problems of Spain for the last twenty years have been domestic. Among the blessed results of the Spanish-American war were the loss of the West Indian and Philippine possessions, and the consequent opportunity to devote the national energies to the development of internal and overseas commerce, to the construction of railroads, to the improvement of agriculture and to the exploitation of mines. Though little enough has been done in these particulars, it was with these tasks that the country was concerned on the outbreak of the European conflagration, and it is to these that the intelligent interests of the country are still endeavoring to devote themselves.

Álvaro Alcalá Galiano, the eminent Spanish publicist, in his recent book entitled *The Truth About the War*, has aptly characterized his country's attitude by likening it to that of a great multitude watching an immense gladiatorial conflict: now and then moved or attracted by the prowess or success of one or another of the combatants. Again, he compares the war to a great conflagration "which reddens the horizon of Europe, while Spain stands with her arms folded, gazing at the flaming cataclysm without knowing whether the breeze will carry the sparks in her direction and set fire to her own dwelling." After the declaration of neutrality by Premier Dato in 1914, Spain's attitude became essentially that of a spectator, with little or no real interest in the outcome of the struggle or comprehension of its significance.

Nevertheless, the agents of the two great contending parties to this struggle have labored diligently with money and persuasion to secure the adherence of Spain to their cause. This activity has had its effect; and there are now Germanophiles and Aliadophiles in sufficient profusion. Spain has had the reputation of being inclined to favor the German cause; but this is not the case at the present time, though the German influence is indeed strong there. At the beginning of the war and for a year after its inception, Germany was the only one of the contending parties that paid any attention to Spain. Owing to its splendid organization, the German propaganda was extremely

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successful at the outset. There were fifty thousand Germans engaged in commerce and industry in that country and these affable individuals, located in every town of any size in Spain, at once became the official agents of Germanism.[1] Their ranks have subsequently been recruited by their fellow-countrymen who were expelled from Portugal and the Kameruns, and it is said that at the present time there are eighty thousand Germans in Spain. Since their methods were exactly contrary to the cold austerity and precision of the Britisher, who for the first year was concerned with the organization of his own military machine, the German agents were practically unopposed during that period.

In the summer of 1915, the Allies awoke to the situation in Spain, and realized the necessity of combating the German influence. The Anglo-French Institute was accordingly created in Madrid with the purpose of disseminating information favorable to the allied cause. This organization prints and sends out literature, delivers lectures at different centers and exhibits cinematograph films of allied activities to select and invited audiences, all of which is calculated to create and maintain sympathy for the cause of England and France. On the whole, it may be said that the German campaign is better organized than that of the Allies, and furthermore enjoys the advantage of an early start in a field wherein it operated alone for a long period of time, building, as it were, from the ground up. At the present, however, the allied propaganda enjoys the favor of the government; the Germans have been forbidden, for example, to exhibit pictures in certain parts of Spain, while the Allies continue without interruption in their work of "educating the public."

The most effective way in which the contending parties have operated to capture public opinion in Spain has been through the control of the public press. The leading daily papers of

[1] Alcalá Galiano says that "German agents in Spain have offered great things. William II is going to be our Messiah. So great is his love for Spain that he is going to return us Gibraltar, give us Portugal and cede us Morocco; to reconcile the clergy and punish the Quirinal for its treason he is going to reëstablish the temporal power of the Church. With this insane enthusiasm and this Quixotic reasoning, Germanophilism has become an absurdity."

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Spain are almost entirely devoted to one camp or another of the contenders in the great war, and it is a matter of common comment that they have all been paid their price. The cause of the Allies is ably championed by the *Heraldo de Madrid*, the *Imparcial*, the *Correspondencia de España*, and the *Liberal*, not to speak of Count Romanones' periodical, the *Diario Universal*, the *Día* and the weekly publication, *España*. The *A. B. C.*, probably the best edited paper in Spain, is favorable to Germany, as are also the church organs, the *Correo Español* and the *Debate*.[2]

The time-honored classification of the inhabitants of the Spanish section of the Iberian Peninsula with regard to their war sympathies attributes to the army, the clergy and the conservatives a leaning toward the German cause; while a majority of the mercantile classes, the Liberal and Republican parties and the common people are said to be hopeful that victory may rest with the Allies. The Intellectuals, who in Spain form a class by themselves, are quite evenly divided. Dramatists and writers such as Emelia Pardo Bázán, Benito Peréz Galdós, Blasco Ibañez, Felipe Trigo, Alvarez Alcalá Galiano and Hermógenes Cenamor are active in the support of the Allies, as are the well-known historian, Rafael Altamira, and the ex-rector of the University of Salamanca, Miguel de Uñamunú.[3]

[2] Notable indeed was the increased ardor of the support to the Allies afforded by the chain of *Liberales*, printed in Madrid, Seville, and Barcelona, and of the *Correspondencia de España* shortly after the visits to Spain of Lord Northcliffe and John Walters, editor and manager, respectively, of the London *Times*, and active members of the British propaganda committee.

[3] Galdós, who is an ardent admirer of England, recently expressed his conviction that the secret of that nation's success as a colonizing power, as contrasted with the failure of Spain, has lain in the autonomy and the absolute liberty of worship and government conferred upon her subjects by the former country, while Spain lost her colossal empire through religious intolerance and bureaucratic centralization. In the same spirit, Galiano has repeatedly expressed his love for England, "the home of liberty, religious, political, and individual, controlled as she is by electoral sincerity and not by a parliamentary farce manufactured neither by ministers as in Spain nor by a fictitious popular assembly like the Reichstag, dominated by the Kaiser and his chancellor." The Countess Bazán has labored diligently in behalf of the French Red Cross. Blasco Ibañez has been with the French army for two years making observations and writing therefrom a history of the war. Professor Altamira has shown his pro-Ally sympathies in a recent book, Felipe Trigo has done the same in his *Crisis of Civilization*, and Professor Uñamunú lectures and writes in behalf of the Allies.

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The pro-German Intellectuals include such men as Prof. Bonilla y San Martin, the philosopher and legalist, Jacinto Benavento, the dramatist, Pío Baroja, the novelist, and the journalist, José Salvierra. These men have never advocated the advisability of Spain's entering the war on the side of Germany, as some of the supporters of England and France have urged that Spain espouse the cause of the Allies. To these Intellectuals, however, as well as to all persons who intelligently sympathize with Germany, the latter country's splendid organization appeals. Her great advance in science this last half-century, her centralized government, her respect for authority which has made possible the mobilization of every resource for war, her clean and well-governed cities, the intelligence of her people, her schools and education, all of these have made a great impression. In a word, German efficiency is admired in Spain by those who realize the latter country's defects in that regard and her near approach to decadence in this progressive age. Germany has to a plentiful degree those qualities which Spain so sadly lacks. That is the reason for the Spanish admiration of Germany and the tendency of some people in Spain to overlook such acts as the torpedoing without warning of vessels, including those of Spain, the exposure of the lives of non-combatants, and the violation of Catholic Belgium.[4]

It is of course quite clear why the military element should have admired Germany at the beginning of the war; the efficiency of her armies and the telling effect with which blow after blow fell in rapid succession quite captivated the military classes in Spain.[5] The advance to the Marne, the campaign against

[4] As a contrast to this point of view, Prof. Uñamunú's characterization of the German attitude toward Spain is interesting. In this connection he says: "In regard to us, the Spaniards, however much we may complain against the treatment of the English and French, we must confess that the Germans have not treated us either with disdain or without it. Plainly, they ignore us. For the German nation the Spanish people do not exist, except indistinctly as distant savages with warm blood who live among themselves in cafés or playing the guitar beneath the shade of orange and palm trees; but if they were our neighbors, as the French are, you would hear: 'God free us from such neighbors.'"

[5] Alcalá Galiano states that fascination for the versatile personality of the Kaiser was a large factor in determining the attitude of the Spanish military element. "His theatrical character, intolerant of a rival, and particularly antag-

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Russia, the lightning rapidity of the Balkan campaign and the chastisement of Rumania confirmed the admiration on the part of Spanish military classes of Germany's military efficiency; while England blundered in the Dardanelles, in the Balkans and at Salonica. These points have been openly commented upon and the public has been influenced and entertained by captious articles written by the Spanish military critics, Polavieja and Armanda Guerra in the *A. B. C.* and in the *Debate*. These Germanophile articles became so caustic that the friends of the Allies were obliged to resuscitate a forgotten law which forbade Spanish army officers to criticise the military operations of friendly powers; and the result was that several editions of the *Debate* were confiscated by the government, Polavieja was fined, and Armanda Guerra was imprisoned. Nevertheless England's tremendous military transformation has brought about the conviction in some circles that Germany has no longer a monopoly on military efficiency. In the same way, the quiet but courageous sacrifices of the French have struck a sympathetic chord in some quarters. In the army as well as in civil life, however, it may be said that German efficiency is a compelling source of admiration, and this is in no way associated with the principles at stake in the war.

Fray Alonzo Lugan, in a recent circular addressed to the Germanophiles of Spain, points out that the German discipline which is so universally admired throughout the peninsula as a possible agency for the rejuvenation of decadent Spain would prove undesirable in that country and inconsistent with the principles of the established government. In Germany it has been possible through the unity of a great people with one language and a similarity of ideas; this, the author points out,

onistic to Theodore Roosevelt, makes him the victim of an indescribable feverishness; he changes his attitude every instant: now we see him dressed as an admiral, a general, a hunter, a yachtsman, a warrior, a sovereign, a citizen. The Kaiser seems indefatigable, he parades his soldiers, he reviews his fleets, he makes political discourses, he reads his Bible, talks about himself and God, entertains himself in his idle hours in the modest occupation of a carpenter, patronizes the opera, composes ballets, and to demonstrate his omnipotence, stages them in the Imperial Opera."

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would never be successful in Spain, where provincialism is strong and where one district has only contempt for the other. Centralization in Spain would be impossible because of the physical barriers which separate one part from another. Such a scheme presupposes patriotism; there is none in Spain. It is based on respect for authority and on what is akin to emperor-worship. This is contrary to Spanish principles, and would be impracticable in Spain where the most intelligent of the working classes are revolutionary and anarchical. Reorganization on German lines would presuppose an intelligent body politic; but in Spain education is restricted and popular ignorance is the rule. The late Bishop of Toledo summarized this whole question when he counseled against the inauguration of foreign social reforms in Spain. This prelate stated that Germanization could never be carried out in Spain except by force, and this he regarded as doomed to the same failure, if tried, as was encountered by the French reforms of 1808–1814, which provoked only popular indignation and widespread resistance.

Possibly the most pronounced and certainly the most forceful pro-German element in Spain is the clergy. This is difficult to understand in view of the Germanic violation of Catholic Belgium. As stated above, practically all of the ecclesiastically owned papers are pro-German, and in a country wherein few books are read the press and the church are bound to exert considerable influence. The church is powerful since, in one form or another, it controls one-third of the wealth of the country, including mines, lands, railroads and steamship companies. This constitutes another reason why the church should not be pro-German. Nevertheless, from the most humble and isolated parish priest upward, with a few notable exceptions the clergy is openly pro-German and its members are active agents for the Teutonic cause.

Fray Lugan, in the circular already referred to, states that "if the ecclesiastical party would only take the trouble to examine the subject, they would soon be convinced that Germanophilism does not harmonize with the vital interests of their country, nor with their religious interests, nor with the sentiments of

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justice which should be in accord with their quality as Christians." He then proceeds to discuss this attitude of the church, showing Germanophilism to be inconsistent with Spain's commercial interests and her foreign and domestic policy. He attributes the ecclesiastical support of the German cause to three factors: first, the ignorance of outside conditions on the part of the lower clergy; second, the fact that the Liberals and Republicans are pro-Ally; third, the opposition of the clergy to republican France, the fear of an extension of French influence and liberalism in Spain in case of her victory, and resentment against the recent expulsion of the orders by the French government.[6] The ecclesiastical organs, too, counsel the continuance of Spain in her attitude of neutrality, and urge that the German blockade presents no greater elements of injustice than does that of England.

Diametrically opposed to the opinion of the majority of the Spanish clergy is that of the Archbishop of Terragona, whose views have been widely commented upon. In a statement which he issued in November of last year, he said: "Naturally, as a Spaniard, and as a member of the Spanish church, my country being at peace with all the nations of the world, I am neutral. Rather should I say that I am Hispanophile. But I cannot conceal my love for France, nor my regret that a portion of

[6] Alvarez Alcalá Galiano expresses wonderment at the attitude of the Spanish clergy in the following terms: "in the aristocratic center of London there is a Catholic cathedral, and in the district of Whitechapel there lives quietly a veritable plague of foreign anarchists: this contrast reveals to us the spirit of political and religious liberty which England breathes without endangering the public order. The British Empire has known how to be great without making war on its people or automatons of its citizens. There can be no question but that the anti-clerical campaigns of the French government have contributed largely to the fostering of hostility among the Spanish clergy against the neighboring republic and the cause of the Allies. But do they forget England's benevolence toward the Catholics? Are they ignorant of the great number of emigrated orders established in England? Up to now the government of England has given all kinds of facilities for opening colleges and building churches, but this political attitude may change brusquely if the idea is generated that the church of Rome is hostile to the allied cause. It is certainly to be hoped that in the interest of their religion the Spanish Catholics will moderate the impetus of their opinion."

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the minor clergy in Spain should have endorsed Germanophile ideas and have manifested Germanophile tendencies. Catholics cannot support or uphold in any way the cause of Lutheran Germany. That would be simply absurd. On the other hand, Catholics cannot forget that France and Italy are two great Catholic nations, notwithstanding the separation of church and state in both countries. As for Belgium, the sufferings of that admirable country will always arouse my warmest sympathy.[7] I cannot speak for the government of Spain. I cannot say what Spain should or should not do in this war. I can only say that I obey and shall continue to obey my government, but I may state to you on which side my sympathies lie. I can declare also that the high dignitaries of the church of Spain are not Germanophile." For these statements this prelate has been savagely attacked by the pro-German newspapers in Spain.

Little remains to be said relative to the remaining Germanophile elements in Spain. They consist of the Conservative, Carlist and Neo-Maurist parties, the latter having deserted their former leader because of his pro-Ally tendencies. These parties are all in close coördination with the Catholic party. Their members are the most non-progressive standpatters in Spain: aristocratic landlords and property owners who are entirely out of sympathy with the spirit of liberalism, many of whom, as Galiano expresses it, "obtained the cut of their clothes from London and Paris and their theories from Berlin." At the present time these elements are hopelessly outnumbered, and there is slight danger of their influencing the attitude of the government or in otherwise giving active play to their political sentiments.

The Germanic sympathizers have a number of slogans which they have used extensively in Spain, and to some of these the Spaniard is naturally somewhat susceptible. Among these is the so-called "historical argument." England has been the

[7] The German agents in Spain have not failed to remind the church and the country at large that socialistic Belgium gave open support and sympathy in 1909 to Francisco Ferrer, the Barcelona anarchist, who led a rebellion against the church and the Spanish government. Brussels and Antwerp, they assert, have been properly chastened for raising contributions to support Ferrer in his revolt, and, after his death, for erecting a statue in his honor.

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cause of all of Spain's past misfortune. Her pirates attacked and pillaged the Spanish galleons on their return, silver-laden, from the Americas. It was England's fleets that started Spain's downfall with the destruction of the Armada. In the seventeenth and eighteenth centuries she encouraged Spain's colonies to revolt and broke down Spain's commercial system. She calmly sat by and watched the United States complete Spain's ruination and deprive her of her remaining colonies in America and the Philippines. England's injustice to Spain through three hundred years has been a matter of the utmost concern to the Germanophile agents in Spain since 1914.

Disagreeable facts relative to the character and past acts of France are also frequently brought up in the Germanic propaganda literature. France is a republic and hence a danger to monarchical Spain. Napoleon and the French once invaded Spain and sought by force to place the imprint of French government and civilization upon that country. This argument is also used with some effect in Portugal, especially at the present time when the latter country has been forced to send her sons to the French battle-front. Finally, French liberalism and her reported hostility to the Roman church, as manifested by her comparatively recent expulsion of the orders, is used as a weapon against Spain's northern neighbor. Of all these reminders, perhaps the most effective is that which refers to the Napoleonic invasion, for no series of events of modern history is so well remembered throughout the Spanish Peninsula as the massacres of *el dos de Mayo*.

The influences which operate in favor of the Entente Allies, aside from those which have been already mentioned, are far more practical, potent and in every way up to date than those set forth by the Germans. The latter, by virtue of their distance and their failure to obtain command of the sea, have been unable to exercise any direct pressure on Spain.[8] Britain, on

[8] Spain has not departed from the policy laid down for her in 1896 by the eminent Spanish economist, Joaquin Costa, who advised that "Spain should maintain cordial relations with Germany, but nothing more. Neither friendliness nor hostility should exist between powers so heterogeneous or distant, one from another. Their alliance is not suggested by history, geography, attractions of race or common interest."

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the other hand, exercises a political and economic pressure, and this, notwithstanding the efforts of the Germanophiles, has rendered undesirable any outward manifestation of sympathy with the Teutonic cause by the Spanish government. The key to Spain's political attitude, therefore, may be seen in the British control of the seas, and no change to a less favorable attitude may be expected unless the German fleet replaces that of Great Britain. The government follows the course of greatest interest,—it may be depended on to conserve peace and friendship with the power whose merchant marine up to the first of the present year has itself, in spite of the many calls made upon it, brought to Spain the coal, the food and the manufactured goods so badly needed, and whose navy has permitted the ships of Holland, Norway, Sweden and the United States to come to Spain's shores on similar missions. A declaration of war on the Entente Allies would therefore be suicidal, a realization of which fact was shown in the general election of March of this year, when the government was returned to office by a three to one vote of confidence.

Aside from the impossibility, under existing conditions, of the coöperation of Spanish and German forces against the Entente Allies, a number of considerations exist to determine the adoption of a friendly attitude toward the latter powers. At no time after the declaration of neutrality by Premier Dato in August, 1914, has there been any danger that the government would favor the German cause; indeed, the tendency in government circles has been in the other direction, and the real question which has repeatedly presented itself with increasing force has been whether Spain should not express her sympathy for the struggle of England and France, either by a declaration of benevolent neutrality or by the open espousal of their cause. This tendency first showed itself in October, 1915, in the choice of Count Romanones,[9] a Liberal with strong pro-Ally proclivities, in place of Señor Dato as prime minister and the support of his administration as manifested in three subsequent elections by preponderatingly Liberal majorities.

[9] In 1914, shortly after Dato's pronouncement of neutrality, Count Romanones published a circular which enjoyed a wide circulation, entitled *Neutralities*

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Possibly not less significant have been the declarations of Spain's leading statesmen with regard to the policy which Spain should follow. These pronouncements all emphasize first and foremost the necessity of maintaining friendly relations with the Entente Allies and some go so far as to advise entering the war. These universally exhibit an appreciation of the utter dependence of Spain upon the good will of the Allies, first in order to exist at all at the present time, and second in order to perpetuate their guarantee of Spain's preëminence as a power in the western Mediterranean and the retention of her colonial possessions in northern Africa, and finally in order to secure their aid in the maintenance of friendly relations with the states of Latin America. There can be no doubt that the frequently manifested sympathy of the latter nations for the cause of the Allies has exercised a tremendous influence in determining Spain's policy in the same direction.

Before coming into office Count Romanones made a number of declarations which showed his belief that the preservation of friendly relations with the Allies would yield far more than the adoption of a similar attitude toward Germany. Notable, indeed, was his address delivered at Palma de Mallorca in April, 1915, wherein he declared that the Pact of Cartagena should be the guiding principle of Spanish politics, and that Spain should remain at the side of England and France in all that referred to the control of the Mediterranean.[10]

Probably the best known and most respected statesman in Spain is the great Conservative leader and ex-premier, Señor Maura. For nearly a year he preserved the most reserved silence with regard to the war, causing great expectation there-

Which Kill. The theme of this publication was that the war presented to Spain an opportunity to identify herself with the Entente Allies, and thus to revive herself as a power, to rehabilitate her army, her navy, her credit, her commerce and possibly her colonial empire. The adoption of a neutral attitude, on the other hand, was the rejection of a grand opportunity, sounding, as it did, the death-knell of Spain as a power.

[10] "On account of the problem of the Mediterranean," he said, "we must remain in the north of Morocco; on account of the problem of the Mediterranean, principally, we must develop our military and naval efficiency at the bases of Cadiz, Cartagena and the Balearics; on account of the problem of the Mediter-

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by; but when he did speak on April 21, 1915, his words caused a split in his party and Maura is no longer ranked as a pure Conservative. This statesman, who during his term of power had been largely instrumental in the formation of the Pact of Cartagena, expressed himself in terms similar to those employed by Romanones. He made no direct reference to the war, but he urged the conviction that Spain should continue that policy which was best calculated to conserve her power in northern Africa and in the western Mediterranean. "Spain," he said, "has the position in northern Africa and in the western Mediterranean which was granted to her by that agreement [Pact of Cartagena], she has a community of interests with England and France and the reciprocal promise of maintaining and working in favor of this community, and of this *status quo* was given by the powers concerned." Maura moreover stated that Spain's ambitions and necessities were the same in 1915 as in 1907, and the same considerations urged her at the present time to adhere to the Pact as in 1907.

On September 10, 1916, immediately after the entrance of Rumania into the war on the side of the Allies (and that event profoundly moved public opinion in Spain), Señor Maura made an address at Beranga, near Santander, and this discourse went much further than his earlier one in expressing his conviction as to what should be Spain's attitude toward the war. Affirming that Spain's neutrality had been incontestable and of the utmost sincerity and alleging that no power had been or would be able to force her to abandon that attitude, it was nevertheless isolating her politically and commercially, and hence was being maintained with more difficulty and at a greater loss than would be caused by actual intervention in the struggle; in fact, Maura alleged that a continuance of her present neutrality threatened Spain's very life as an independent nation. He asserted that Spain's position among the western group of Euro-

ranean, both Conservatives and Liberals maintained the agreements of 1904, 1905, 1907 and 1912; and on account of the problem of the Mediterranean, is imposed upon us the policy of approximation to those nations, with which, since the beginning of the reign of Alfonso XIII, we have maintained the most friendly relations."

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pean nations gave her a community of interest with England and France and demanded that she should ally herself with them in order to share the fruits of their successful commercial and political measures. Maura pointed out that Spain's failure through three centuries to effect a commercial union with these nations had contributed to her own decadence, and that her future salvation and prosperity depended upon an alliance. He counseled that negotiation should be undertaken "in order to obtain assurances from the powers of the Entente that any sacrifices which Spain may make in their behalf will receive suitable recognition and compensation." This pronouncement elicited international comment and Señor Maura was called for consultation by the king and by Count Romanónes on repeated occasions after he delivered this address at Beranga. It is certain that in a quiet way Señor Maura has been doing his part in the determination of Spain's future policy.

Not only have the respective chiefs of the Liberal and Conservative parties shown strong pro-Ally leanings, but the chief of the Radicals, Don Alejandro Lerroux, has consistently urged the intervention of Spain during the last two years. Immediately after the war broke out Lerroux toured Spain and made vigorous pro-Ally speeches, counseling intervention. He was listened to in some centers, but at Seville and Irun he was subjected to rough treatment by those who did not agree with him. In a statement issued as lately as February 1, 1917, he declared himself to be an enemy of neutrality and a protagonist of intervention. He professed to be greatly humiliated by his country's quiet submission to the destruction of Spanish ships by German submarines and shocked at the scandalous operations of the Germanophiles in Spain, who, he alleged, had been sowing money right and left in their efforts to contaminate Spanish public opinion, and had used Spain's ports as supply-bases for the very submarines which were sinking Spanish ships.[11] He

[11] It is a well-known fact, notwithstanding repeated official denials by the Spanish ministries of marine and war that, excluding the Canaries, there are at least two and probably three German submarine bases off the coast of Spain. These are located near Cartagena, in the Balearic Isles and probably near Vigo or Coruña. Launches and rafts with oil and provisions for the submarines have

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claims, like Maura, that a continuation of neutrality will spell decadence and death for Spain, while intervention on the side of the Allies will prove her salvation.

Another Spanish statesman, Don Melquiades Álvarez, chief of the Reform party, is a warm supporter of the Allies. In a speech made on May 1, 1915, he expressed the opinion that it would be suicidal for Spain to make common cause with Germany and Austria. "I therefore insist," he said, "that in case the day should arrive on which we must abandon our neutrality, a thing which I do not desire, we place ourselves resolutely on the side of England and France, with which nations we already have such a solidarity of interest that their hostility would be equivalent to our ruin." However, Señor Álvarez has not gone so far as openly to advocate Spain's entrance into the war for purposes of convenience. On September 15, 1916, a few days after Maura had made his memorable address at Beranga, Álvarez admitted that Spain does not possess the financial and military resources necessary for participation in the struggle, and that she moreover lacks such a motive to excite popular enthusiasm as an *irridenta* to regain, as have Italy, France and Rumania; moreover her liberties have not been threatened, as have those of Servia and Belgium; and she cannot fight for her life and her colonial empire, as England and Portugal are doing. The absence of a direct motive has deadened popular sensibility to the important fact that Spain is welded by economic and politi-

been repeatedly seized by the coast guards, powerful chemicals and explosives for the inutilization of German ships in Spanish ports have been landed from submarines and seized by the government, and numerous arrests have been made of German agents who have been seen to land from submarines. The press has taken the matter up and exposés were made by the *Correspondencia de España* (editions of February 27 and March 8, 1917).

As a guarantee of Spain's neutrality, the *Liberal* of February 7, 1917, demanded the seizure by the government of all wireless stations, in order to prevent German agents from informing the submarine commanders of the departure of ships. It petitioned that all Germans in Spain should be kept under government surveillance, that the ninety-two German ships scattered about in different Spanish ports should be congregated in certain centers and guarded, that frontier roads and bridges should be guarded to prevent German agents from destroying them, thus interfering with Franco-Spanish communication, and finally that zones 50 kilometers wide should be established on the French and Portuguese frontiers and all Germans kept out of those areas.

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cal ties to England and France, and that these nations can punish Spain severely for any step which she might take in the wrong direction. Señor Álvarez therefore advocated a continuation of the policy of benevolent neutrality toward the Allies. Like Maura and Romanones, this leader has been moved powerfully by his country's Mediterranean and North African interests, which England and France have guaranteed. He is also cognizant that 60 per cent of Spain's foreign trade is with the Allies.

It remains for only one man of political importance in Spain, the leader of one single party, the Carlists, to espouse the cause of Germany. This is Don Juan Vásquez Mella, the golden-tongued orator of Spain. An admirer of French culture and a strong Catholic, he is ever mindful of England's past offenses to Spain and the subject of his continual repining is the loss of Gibraltar. He has consistently supported the idea of an alliance with Germany and at the beginning of the war he advocated intervention in her behalf. Since the events of last year, however, he has changed his opinion, and at the present time he advocates the adoption of the strictest form of neutrality.[12] He agrees with Señor Maura as to the advisability of forming an alliance with the dominant powers of European politics for the safeguarding of Spain's commercial interests and her Mediterranean policies; but he contends that as yet it is too early to make the choice. He is a firm believer in militarism. He wants Spain to put her army on a war footing and to build an adequate fleet of submarines. He believes that with these resources Spain could compel either England or Germany to make her such concessions in exchange for her support as would elevate her to the rank of a first rate power.

However, Vásquez Mella cannot be said to be even typical of those in Spain who are opposed to the Allies. An orator, rather

[12] Nevertheless, in his speeches on the 18th and the 30th of last September he spoke of the present as a favorable opportunity for the recovery of Gibraltar either by diplomacy or by force. He alluded to the possibility of reducing Gibraltar in a short time with a few long-range Krupp guns and the mobilization of five hundred thousand men before that place, which he believed would capitulate in a few hours.

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than a statesman, the leader of a lost cause, he frequently becomes intoxicated by his own eloquence, and urged on by the presence, at all of his speeches, of a retinue of invited German and Austrian ambassadors, consuls, military attachés and representative residents, he makes statements which find no response in the columns of even the most pronouncedly pro-German papers. As illustrating the opinion of the majority of progressive pro-German Spaniards, an editorial in the *Debate* of August 3, 1916, is much more accurate. The article in question reads as follows: "We are Germanophiles. For love of Germany? No. For love of Spain. Does this mean that we advocate intervention on the side of the central Empires? No person can honestly accuse us of harboring such an insensate desire. Do we defend our neutrality in order to favor the German side? No. It is because we do not want Spain to suffer the ills, the shocks, the irreparable misery and loss incidental to the struggle. It is because neither our national finances, our army, our navy nor our social forces are in condition to support the hecatomb; it is because we are of the unalterable conviction that we have nothing to gain in the struggle."

Significant, indeed, is the fact that the pro-German press and leaders in Spain have abandoned all hope of Spain's entrance into the war on the side of the Central Powers; they now confine their efforts to keeping the government from espousing the cause of the Allies. In a recent address of Mella even revolution was threatened if the party in power forced Spain into the war. In the same way, the other leading pro-German paper, the *A. B. C.*, in order to aid in combating the pro-Ally tendencies of the government which have been increasingly apparent the past six months, recently published a series of declarations of various Conservatives, Carlists, Jaimists and Catholics, all of whom either manifested the typical Spanish *laissez faire* attitude or rigidly opposed intervention. After an examination of about two hundred of these statements, it would seem that an indolent preference for the quietness of peace and of present pleasures over the horrors of war and an abhorrence of the personal inconvenience which war would incur were the leading

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considerations underlying these replies. Not one of them showed any real grasp of the large international phases of the situation, of what intervention might gain for Spain, or of the principles involved.

Aside from the arguments and policies set forth in the foregoing paragraphs, in favor of and against the continuance of Spain's neutral attitude, there is one consideration which has been most potent in determining the attitudes of the majority of Spain's statesmen and economists. This is a question of commercial convenience. Spain's total commerce with the group of Entente Allies amounted to 1,391,728,511 pesetas in 1913, and this far exceeded the total volume of her trade of 284,766,634 pesetas with the Teutonic Allies.[13] Another point which the enemies of Germany do not fail to emphasize is the fact that in 1913 Germany sold to Spain 112,000,000 pesetas' worth of material in excess of the amount bought from her, while in the case of the Entente Allies the trade balance is considerably in Spain's favor.

It may not be generally known that Spain furnishes to England daily an average of three shiploads of iron and copper ore. During the last two years the figures have grown to immense proportions and biweekly *flotas* of ore-ships leave the ports of Spain for England, escorted by British destroyers, some of them returning with the coal which is so badly needed, others making haste to return empty to be reloaded. In the history of the shipping world few ports have risen to prominence in a shorter time than has Bilbao, in the north of Spain. Shipping values in some companies have increased from 25 to 1000 pesetas per share. The copper port of Huelva, which is the place of outlet for the British controlled and operated mines of the Rio Tinto, now presents a scene of great activity. The war is transforming parts of Spain, industrially. Even before the war Spain sent annually to the countries comprised in the group of Entente Allies 176,112,012 pesetas' worth of mineral products, and to the Germanic Allies only the worth of

[13] Cenamor, *Los Intereses Materiales de España en la Guerra Europea*, Madrid, 1916, p. 206.

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17,083,438 pesetas. This is an argument of sufficient significance to convince the merchant and exporter that it is to Spain's interest to unite herself with England and her allies.

An important industry in southern Spain, centering principally around Valencia and Seville, is that of cultivating and exporting oranges. Of a total export business of approximately 70,000,000 pesetas, the distribution between the two groups of contending nations was formerly 49,000,000 for those of the Entente and 13,700,000 for the Teutons. The raisin trade, centering at Malaga, has in the past derived its chief support from the Entente Allies, who have bought 6,000,000 pesetas' worth of the dried fruit to the Germanic Allies' purchase of the value of 400,000 pesetas. The same proportion exists in the peanut trade, the Allies spending an aggregate of 3,000,000 pesetas while the Germans have purchased peanuts to the value of 200,000 pesetas. "It is therefore clear," says Hermógenes Cenamor, "that Spain, commercially speaking, is in the power of the allied group and depends on the Germans to such a small proportionate extent that there is not the least comparison."

There remains yet another group of statistics to show the preponderating influence of the Allies in the commercial and industrial life of Spain. It is well-known that French capital made possible the inauguration of railroad building in Spain. French and Belgian capital are today interested in Spanish railroads to the extent of 176,000,000 pesetas. The Southern Railway Company of Spain is now controlled by the British. The total investments of the three allied nations of Britain, France and Belgium in the development of Spanish industries, including the exploitation of mines and the operation of railroads and tramways, water and electric plants, amount to more than 4,000,000,000 pesetas, while the Germans have only 200,000,000 pesetas invested. The withdrawal of this capital, or the temporary suspension of these industries which would follow upon the inauguration of a state of war between the Entente and Spain, would be ruinous to the latter country. Aside from increasing the great mass of the unemployed which has already been caused by the reduction of Spain's mercantile activity as a consequence of the sub-

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marine blockade and the disappearance of former markets for Spanish goods contingent on the war, the utter paralyzation of her mines and her fruit industry and the damage which would result to her railroads, her water and her light plants would be irreparable. These economic considerations are patent to every well-informed Spaniard. They explain clearly why the mercantile classes from the retail seller to the great shipping promoter are sympathetic with the cause of the Allies. As above stated, they also furnish reasons for the attitudes of such statesmen as Romanones and Maura, and, in fact, they no doubt constitute the leading considerations underlying the pro-Ally policy of the government.

It has been urged by those Spaniards who are most wide awake that the war presents the opportunity for Spain's economic rejuvenation. Aside from the pursuance of such a political policy as will permit Spain to share the fruits of the victory after the war, there are those who believe that Spain, by keeping out of the struggle, will strengthen herself by thus conserving her energies, while the conflicting parties waste their resources and weaken themselves in the titanic conflict. Manual Linares Rivas, in a recent article in the *A. B. C.*, urged his fellow-countrymen to take advantage of the conditions imposed by the war to make an economic readjustment, producing those commodities which are now denied to Spain. This would mean the exploitation and utilization by Spain herself of her abundant mineral resources, including copper, coal and iron, the establishment of manufactories, and the utilization of Spanish coal in ships and on railroads and in power plants instead of the importation of this combustible from England. Hermógenes Cenamor is another publicist who urges the present time as the proper occasion for Spain to develop her agriculture, which he shows to be sadly deficient. By the development of her merchant marine this same writer says, Spain should extend her foreign commerce and establish her ships permanently in the foreign trade.[14]

[14] Spain has failed to follow out any of these recommendations. Indeed, all of the foreign services of the Spanish transatlantic and Philippine steamship

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The occasion presented by the war should be seized, moreover, urge some Spaniards, to strengthen the decaying ties between Spain and Latin America.[15] Álvarez Alcalá Galiano believes that the war affords "an unequalled opportunity to strengthen the Spanish bonds of union with South America and especially

lines have been reduced, while the greater part of Spain's insufficient mercantile marine confines itself to the coastwise trade. Since February 1, trade with the Allies has become almost extinct, for Spanish ship companies refuse to send their vessels to sea when the government cannot protect them and will not permit them to defend themselves. The prosperous port of Bilbao has to rely on British ships to carry the ore away, and the mineral is rapidly accumulating; efforts have been made by the British to buy or lease Spanish ships, but this the government will not permit.

In the same way the Spanish orange trade would be ruined were it not for the constancy and fearlessness of the British and Norwegian shipping companies. During the month of February, thirteen British and Norwegian ships left Valencia and Alicante with fruit, and all of them reached their destinations in safety. During the same period not a single Spanish ship essayed the venture. Up to the present time Spanish ships aggregating a displacement of 65,000 tons have been sunk by German submarines. Of these, two, the *San Leandro* and the *Medea*, were laden with oranges destined to Holland and England respectively.

In order not to destroy Spain's fruit industry entirely, England has conceded to the latter country the right of exporting to Holland, Norway and Sweden the same amount of fruit that is purchased by those countries in time of peace, in this way guaranteeing that the fruit shall not reach Germany. The German government, on the other hand, has ordered her submarine commanders not to sink Spanish ships destined to neutral ports provided they bear certificates of destination signed by German consuls. Most of the ships sunk, however, have been carrying iron and copper ore to England, or English coal to Spain or Italy.

[15] Speaking of Spanish commerce and influence in Latin America, Hermógenes Cenamor (*op. cit.* pp. 124–125) says: "Our commerce with America is elusive. It is of no value to Spain that she has exercised absolute dominion in that continent for centuries. Nothing it has served her that her inhabitants are of Spanish origin and that the greater part of her commerce is in the hands of Spaniards." Cenamor comments that notwithstanding these advantages, Spain occupies a minor place in the American trade and he predicts that she will ultimately lose the spiritual and racial advantages which she now holds. He says that the United States will teach Spain a sad but unforgettable lesson by her commercial penetration in the South American republics. He comments that the United States has celebrated two Pan-American conferences since the war began, and even Germany has found time to create an economic league under the presidency of Dr. Dernberg in Central and South America with the purpose of fomenting the industrial interests of Germany there. France has also sent various commercial missions, while Spain has done nothing.

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with the great Argentine Republic."[16] There are those who still fondly believe that Spain's attitude with regard to the war will determine that of Latin America.[17] That this idea is not shared by intelligent public opinion is shown by an article printed in the *Liberal* of February 7 of this year, in which it was stated that if the South American republics should decide to follow Wilson's lead in the matter of severing diplomatic relations with Germany, "perhaps Spain would be obliged to change her attitude also," adding "that the Spanish government would be able to resist all the influences which might cause her to enter the war excepting the determination on the part of the Latin American republics in favor of the policy of Wilson."

The pro-Ally tendencies of the Spanish government can be further gauged by the replies of Count Romanones to the peace notes of the United States in December and January last. These propensities were pointed out and commented on in the anti-administration press in no uncertain terms, the accusation being openly made that these replies were made only with regard to the interests of France and England and that they were probably edited in Paris or London. On December 31, 1916, the *Debate* expressed great regret that the Spanish government should refuse to coöperate with the United States, either in the request that the warring nations state definitely what they are fighting for or in the formation of a league of neutrals to guarantee neutral rights. In this last particular the *Debate* says that Spain separates herself from all other non-combatant nations

[16] "It is difficult to understand," continues Galiano, "considering the spiritual and material bonds, every day closer, between Spain and the great Argentine Republic, how the government of His Majesty should fail to accede to the desire of the majority of the Spaniards residing there, and to raise our legation to the category of an embassy." After referring to the increasing cordiality of the sentiments between the two countries as shown by the hospitality and friendly welcome accorded Spanish artists, writers and professors, the large emigration from Spain to the Argentine, and the ties of blood, language and literature uniting these two countries, he expresses his regret that some governments gain more there by astuteness than Spain does by her sympathies, adding that "though public opinion saw with indifference that our (the Spanish) legation in Washington was made an embassy, it would welcome such a change in our legation in Buenos Ayres with great satisfaction." Galiano, *España ante la guerra Europea*, pp. 35–36.

[17] See Zulueta in the New York Times, about September 16, 1916.

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and publicly declaims herself to be a vassal of England. This paper, moreover, accuses the government of "persisting in its policy of cowardice and debility and of once more sacrificing the Spanish people in order not to displease France or England." There is not one word or sentence in the note to express or indicate the desire of the Spanish government that the horrors of war should be promptly terminated, and this unpardonable and inhuman omission obeys, doubtless, the desire of not causing the least inconvenience to the governments of the Entente which have already shown themselves opposed to the peace proposals of Germany and the United States."

The *A. B. C.*, however, finds it possible to approve of the attitude of the Romanones administration in refusing to cooperate with the United States in this matter. In its issue of January 10 of the present year, this paper gives expression to the characteristic Spanish dislike of any and all things originating in the United States in the following terms: "The fact that Spain has not wished to follow the orders of President Wilson when the latter did not even take the trouble to consult the other neutral governments before launching this note is taken by many as a clear indication that Spain is inclined to favor the Entente. We are of the opinion, however, that it would have been an act of stupidity for the Spanish government to have submitted its attitude to the criterion of President Wilson. The United States, the nation which, more than any other, has contributed most to prolong and add fuel to this war, cannot consistently at this time set forth high ideals. Her sole motive has been to increase her national wealth, selling for gold the lead and iron by which the most prosperous and civilized nations in the world have shed each other's blood. The United States lacks the necessary prestige, therefore, to petition with any degree of force for the termination of this war simply because its continuation is beginning to hurt American business. Spain, the nation which up to the present has been unequalled in her humanitarian efforts and in her zeal for the good of all the belligerents, needs no other recommendation than her past conduct to convince the combatants that her disinterested services

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would be at their disposal for mediation when the opportune hour arrives."

The above citation indicates another reason for Spain's refusal to take a decisive attitude with regard to her rights as a sovereign power. Her ships have been torpedoed, her merchant marine is now tied to the wharves in her own and in the allied ports, her fruits are rotting because of the lack of transportation facilities, her poor are starving because there is no employment, and still the government refuses to heed the petitions and protests of her merchants and exporters. As above stated, she has constantly refused to coöperate with other neutral nations for the maintenance of her rights.

It has been openly charged that the government is being reserved by the Allies as a mediator when they have done fighting and when the opportune hour arrives. Julio Camba, writing in the *A. B. C.* on January 29 of this year, cites the following quotation from a recent issue of the New York *Herald* on this very subject: "When the governments of the Entente decide on the election of a neutral to preside over the reconstruction of Europe, there is no doubt that they will give the presidency to Spain and not to the United States." This was written, of course, before the United States entered the war. Furthermore, Señor Camba writes, "The entire policy of the United States with respect to the European war has had one end in view, that of directing the future peace negotiations and of deriving therefrom the utmost possible advantage. With this object in view, President Wilson wrote his famous note, but in this he overreached himself. And Spain, on pointing out the inconsistency of the American attitude and in contributing to the failure of the note, places herself in an excellent position against the day when they come again to speak of peace on a more solid basis."

As the above will reflect, there has existed in Spanish official circles an intense spirit of rivalry and opposition to the United States, in regard to the respective possibilities of the two nations of playing an important part in the peace negotiations. This attitude has also been shown by the official declarations of

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Romanones, and particularly in his December note wherein he accused the United States of insincerity and inconsistency in her expressed desire to bring about peace. This spirit is very clearly exhibited by the *Heraldo de Madrid* in its issue of March 9 of this year, when that paper caustically quoted the question asked by the New York *Sun* as to how the man who failed to bring about peace on the Mexican border can impose it on the world. Accusing President Wilson of being a visionary, the *Heraldo* deems it but an indication of his further unfitness that after two years and a half he should ask what the nations are fighting for. According to this daily, President Wilson has not only made himself ridiculous, but has lost the confidence of both groups of combatants. "There is something, however," continues the *Heraldo*, "in the last *manifesto* which we cannot pass by in silence, and this is the haughty affirmation that only the great American republic seems authorized to officiate as arbiter in the European conflict. And Spain?. And Switzerland? Are we so little in the eyes of Mr. Wilson as to be entirely negligible? Is it that the tact, the intelligence and the humanitarianism of our King Alfonso does not permit us to hope that our voice may be heard in the deliberations of peace? In such matters and on such occasions considerations of high moral principle and conduct count most, and Spain's past has shown her to be a country of preëminent lineage, unsurpassed in humanitarian principles and high ideals. By what right then does Mr. Wilson attribute to himself a monopoly of these qualities and claim the sole right to intervene?"

However bitter the above sentiments may be, a very different spirit is shown in the appreciation written by the eminent Josè Salvierra in the *A. B. C.* of January 29 of this year. This writer says that "President Wilson's declaration before the senate is of tremendous importance to us as Spaniards. For the last several months we have been deceiving ourselves with the idea that Spain and our King, Alfonso, were destined to initiate, propose and conclude the peace. But the truth is that negotiations for peace are virtually initiated, and it is certain that the glory of the initiation belongs to the United States. It would

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be useless for us to close our eyes to the truth that President Wilson is working for the real peace, that is, for the liberty of the seas, for the suppression of offensive alliances, for the elimination of large armies and navies, and, finally, for peace without victory. There is also reason to believe that intervention on the part of Spain would in reality be backed by the Allies. Our peace would therefore be a pro-Ally peace, while Mr. Wilson proposes a liberal and a humanitarian peace. And we do not believe that the United States is making this advance in vain. The world must listen to Mr. Wilson because he is backed by 100,000,000 souls and a gigantic moral force. We, as Spaniards, can only deplore that in this hour Spain could not have been daring and resolute enough to speak the first word to bring this cataclysm to an end. It is true that the nation which does this must be backed by great prestige; North America possesses the prestige of her battleships, her population and her wealth; Spain has an historical prestige: the record of a decorous attitude throughout the war and a king immensely respected. But shall we lack a statesman (Romanones), who, like Wilson, can express noble ideals and utter inspiring words? There is yet time. The real question is whether Spain's pacific intervention will be based on the pure principles of a sincere desire for peace, or whether she will speak only when it suits the convenience of the Allies."[18]

[18] Although recent events have exhibited the mistaken character of some of the sentiments expressed above, and have, moreover, removed the United States from the possibility of participation in the peace conferences as a neutral, these expressions are so accurate in expressing the Spanish attitude that it seems best to leave these citations as they were originally written just prior to the entrance of the United States into the conflict.

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OPPOSITION TO HOME RULE[1]

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Local self-government has so long prevailed in English constitutional practice, and in recent times has been so generously extended to colonies and dominions, that it might seem an anomaly for Home Rule to be ardently desired in Ireland, yet bitterly contested and thus far withheld. Many favorable generally to the idea of autonomy without special reference to the condition of Ireland have believed this to result from a stubborn obstinacy and blind perverseness, perpetuating in tragic fashion a tragedy of olden times. But it might be suspected that such reluctance arose in part from circumstances of a great while ago, which continue or have bequeathed consequences not to be neglected; and an examination of the controversial literature which appeared just before the war reveals many objections which, in so far as they were actual and honestly held, were undoubtedly valid and potent. Certainly a great many people believed that Home Rule was not only unnecessary for the interests of Ireland, and really to the detriment of the Irish people, but that whatever might be the results with respect to that country, without doubt self-government, so far as it tended to separation and the erecting of an independent or hostile government, would be fatal to some of the largest interests of England and the British Empire.

In Great Britain by 1914 there were probably few, and they steeped in Toryism and ancient thought, who wished Ireland

[1] This article, designed to exhibit some of the public opinion which characterized the Irish crisis in the years before the war, is based largely upon the fleeting and controversial literature which was so widely circulated in the British Isles then. From a multitude of publications I have chosen the better ones, and have attempted to expound them with discrimination and fairness. Nevertheless, it has been my purpose to display the opinions which were then taught or believed in England and Ireland rather than to give an account of my own.

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to be held down or oppressed. For the most part people in England and in Scotland, confessing the wrongs and errors of the past, desired that fullest amends should be made, that Irishmen be assisted to economic prosperity and entire freedom in the ordering of their lives, and that such good will be shown and assistance given that in course of time the bitter memories of the past might vanish, and Ireland become a loyal member of the Empire where now she was an unwilling part. But others realized that whatever were the mistakes of the past, consequences had also arisen which could not be justly ignored—here they had reference particularly to Ulster—and that certain fundamental factors of geography and international relations potent in the past continued as important in the present, and could never be neglected in the calculations of statesmen and the plans of those who made laws.

There was opposition to the way the measure was believed to be brought forward and also to principles which it contained. Political opponents and some others asserted that the crisis developed largely because of selfish considerations of party. The Liberals had attained great power when the English people desired sundry social reforms. So far had the tide run and such changes had resulted from the parliament act that Mr. Asquith was virtually supreme. But his power was not absolute, for gradually his majority had dwindled in Great Britain, until the support of Irish members was needed to make his position secure. His ministry now rested upon a coalition, of which the lesser but indispensable part was the Nationalist votes of Ireland, marshalled by Mr. Redmond, who was, because of this, ultimate dictator in the British Isles. It was said that the Nationalist party was financed by supporters in America and led by a group of Irish politicians who dominated Mr. Redmond; that he in turn was the master of Mr. Asquith; and that the latter, whatever his real wishes, was in any event compelled to be champion of Home Rule.

To a considerable extent the legislation proposed had not been properly considered or debated, but was being forced through.

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Of the general election in December, 1910, it was said that most of the Liberal candidates never discussed Home Rule, that Mr. Asquith did not promise to grant it in the ensuing parliament until after two-thirds of the members had been elected, and that he knew he was in Mr. Redmond's power. According to Unionists there was "No Mandate for Home Rule," it was not certain that the majority of British people was willing to grant it, the Liberal government was trying to smuggle the bill through without leaving it to the judgment of the people, and if civil war was to be avoided there must be referendum or reference to public opinion free and deliberate. In 1913 Mr. Asquith maintained with reference to a bill to give votes to women that parliament should hesitate to take a step unprecedented in extent without "a full and assured conviction that it has behind it in taking that step the deliberate and considered sanction of the community;" and he said, "These are general considerations which are applicable in greater or in less degree to any constitutional change." But had the Home Rule bill any deliberate and considered sanction of the community: "Did You Give a Mandate?"

Many persons had grave objection to certain principles or particular details in the prospective law, especially in regard to parliamentary representation, delegated powers, the post office, the judiciary, the constabulary, and numerous things about which conservative legislators are wont to entertain fear. And it was said insistently that considerations of finance made the scheme objectionable or foredoomed to certain failure. With Home Rule, according to some financial writers, Britain's annual contribution to Ireland would be necessarily about £6,500,000; and most agreed that the yearly contribution for expenditures strictly Irish would be at least £2,000,000. It was predicted also that the economic effects of Home Rule would drive employers of labor out of Ireland, and that to keep themselves from starving laborers would flock over to England, Scotland, and Wales in tens of thousands, with the result that workmen in those countries would have lower wages and also less work.

Some argued that the Irish were not now suffering from the wrongs which had once oppressed them. Already Ireland sub-

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stantially governed herself: "She has now precisely the same power to manage her own affairs that England, Scotland and Wales enjoy." In Ireland urban and rural district councils, county councils, and boards of guardians were chosen by popular election; while Irish elementary and technical education, fisheries, agriculture, congested districts, and old age pensions were administered by committees manned by Irish. With regard to economic amelioration, the restoring of prosperity for the mass of the Irish people had been largely accomplished by the just munificence of the British government, which had appropriated huge sums of money for the purchase of the land by Irish peasants, to whom money was loaned at low rate for long periods. "Over one-half of Ireland," said Mr. Redmond in 1910, "the tillers of the soil, are absolute owners. . . . In a few short years the whole of the land of Ireland will be free once and for ever of landlordism." A Unionist leaflet declared that now the Irish farmer could borrow money from the state on easy terms to buy his farm, paying off the price in instalments lower than his rent; that the rent fixed by the state was not to be raised by the landlord; that he could not be turned out of his farm so long as the rent was regularly paid; that the state gave him help to improve his crops and the breed of his stock; that he could now obtain a holding large enough to support his family; and that the state would give assistance with stock and new buildings and even a new cottage at low rent. It was not the Irish, said the writer, who needed further assistance, but the English people, in order that they might have opportunities like these. Already the British government had expended £78,000,000, and would probably have to expend £100,000,000 more. Was it certain that a Home Rule government elected by debtor peasants could be depended on to pay this money back?

Opponents of Home Rule alleged grave objections with respect to the interests of the Irish people themselves. Some of these objections concerned all the citizens of the country, but others had to do particularly with the Unionist minority, one-third of the population, including the Protestants and especially the inhabitants of Ulster.

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First, they said that it was doubtful whether Ireland needed more self-government, and it was not certain that most of her people really wanted it. Undoubtedly the majority of large traders and merchants, the business and the professional classes, the manufacturers and the bankers, were opposed to it. In 1910 Mr. Redmond confessed that the Irish National party would have been bankrupt without contributions from America; and the Reverend J. O'Mara complained that Irishmen who enjoyed benefits which would have astounded their fathers forty years earlier had not the manliness, the gratitude, or the patriotism to subscribe a shilling for membership in the United Irish League.

Home Rule was most desired and urged most insistently by the politicians who hoped to rule Ireland after the measure was passed. "There would be no unrest and no agitation in Ireland for Home Rule but for agitators," a writer asserted. The condition of some places now under the authority of Home Rule corporations made it seem doubtful whether the mass of the Irish people were capable yet of giving themselves efficient government. "The Civil Government of Dublin is a mockery, even to its own people," said the *Daily News* in 1913. If the people were mostly incapable, then Irish administration, no longer supervised from England, would inevitably come into the keeping of the politicians who were now at the head of powerful organizations, like the Ancient Order of Hibernians and others allied with it.

It was constantly urged as a primary objection that under the domination of the leaders of these organizations the country would be in much worse condition than under a government managed or restrained by British authority. At present the power behind the Irish party was the Ancient Order of Hibernians or "Molly Maguires," who controlled the various parts of the United Irish League, who were feared and detested by Protestants and Unionists and also by the most respectable Catholics in Ireland. "A pest, a cruel tyranny, and an organized system of blackguardism," Cardinal Logue had called them; and according to the *Cork Free Press* they were an "organiza-

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tion steeped in crime and outrage," whose domination "would make this country a hell." A Unionist leaflet warned the British electorate that Home Rule meant really the rule of the Ancient Order. In 1913 the *Irish Times* said:

"During the last two years it has extended its influence into every village and town in Ireland. The Order dominates Ireland now, and will dominate it still more thoroughly if the Home Rule Bill becomes law and is enforced."

The methods employed to extend and perpetuate the greatness of these bodies, it was said, would be using unseen power, coercion by boycotting, intimidation, and destruction of property. Old oppression and misrule in the island had left an evil heritage of disorder and crime. It was frequently asserted that crime was decreasing, and doubtless this was so, but there were still numerous instances of boycotting, where friends and employees were driven off by violence or threats, of farms ravaged, of cattle injured, of machinery and crops destroyed. Wide circulation was given to *The Boycotting of Richard Kingston*, to the instance of the aged Mrs. Hall, and to the story of the prolonged defiance of law in the case of "Walsh's Fort." There were stories of brutal murder and cruel revenge, of moonlighting, hayburning, arson. And it was said that such conditions prevailed and such was the character of the Irish magistracy that either criminals were not prosecuted or the trials resulted in gross miscarriage of justice, with secret societies intervening and malefactors allowed to escape. It need not be thought that improvement would come with Home Rule, when the police and part of the judiciary now controlled from London were delivered to the Irish themselves; but rather that the situation would then be to the advantage of ambitious and reckless political leaders for the control of their supporters and the crushing of those who opposed them.

Rule of this sort would be bad for Nationalists, but was it right that Loyalists should be abandoned to such tender mercy? In so far as these changes would result to the detriment of the Unionists, they would affect for the worse a third of the entire population of Ireland, men and women who claimed as their birthright the privileges of free British citizenship, concerning

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whom a moralist had been wont to say that he would be ashamed of his country if ever this minority were deserted. With respect to most of them, concentrated in northeastern Ulster, particular grievances might be expected, especially economic discrimination and the taxing of their industries to support a government founded on an agricultural constituency; but in all parts of Ireland the minority might expect gradually to find schools become sectarian and their children without educational facilities, courts failing to do them justice, the police no longer giving adequate protection, and themselves substantially debarred from public office.

There was finally a thing to be feared by all Unionists who were Protestants, and that was the existence of an overwhelming majority of Catholic voters, who under Home Rule would gradually but surely yield the government in large part into the hands of the church. Many a warning was published to show how priests were awaiting their opportunity. In 1912, according to the *Irish News* of Belfast, the Reverend Gerald O'Nolan said: "We shall have a free hand in the future. Let us use it well. This is a Catholic country, and if we do not govern it on Catholic lines, according to Catholic ideals, and to safeguard Catholic interests, it will be all the worse for the country and all the worse for us. Here it is that religion and nationality meet, and may, and should, go hand-in-hand."

Already, it was said, they controlled a devout and warm-hearted people, easily stirred to passionate hatred of the Protestant faith. Intolerance and outrage were common. The operation of the decree *Ne Temere* denied the validity of marriages not performed by Catholic clerics, and placed marriage altogether beyond the reach of civil regulation and entirely under that of the church; while the decree *Motu Proprio* tended, so far as Catholics were concerned, to place ecclesiastics beyond the jurisdiction of lay tribunals. If such were the case at present, how much greater would be the power of the church when the government was controlled entirely by Roman Catholics? Therefore many Protestants asked earnestly that they be not abandoned by England.

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But whatever were the needs of Ireland, however successful Home Rule might be, and however little the minority might have to fear from its operation, there remained nevertheless reasons why it might be inconsistent with the interests of the people of Great Britain and greatly dangerous and detrimental to them.

Irishmen, it was said, were not loyal to the British Empire, and desired Home Rule now but complete separation afterward whenever that could be achieved. In 1911 a leaflet addressed to the Irish people declared: "Your duty is to teach your children to be loyal to Mother Eire; prevent them from participating in any celebration connected with the forthcoming Coronation." About the same time in Limerick a mob tore down the Union Jack from a house where it was displayed and afterwards burned it. When it was feared that the British army might be used against Ulster, the story of the conduct of Irish members in 1902 in the house of commons was given wide circulation: what Sir Henry Lucy called their merry quarter of an hour and their ghoul-like ecstasy as they shouted and laughed while news was read of the defeat of Methuen with the names of those who lay dead on the veldt. There was many a colored cartoon of Mr. Redmond dancing with glee at the news; and many another of a British soldier sternly reminding him how the Nationalist members had rejoiced, with the question: "Shall British troops be used against loyal Ulstermen?" Some declared that the English army had been referred to as "the most immoral and most degraded Force in Europe." In 1913 the *Tipperary Star* published a very slanderous and derisive account of English soldiers. This, however, was condemned, and by some thought not to represent Irish feeling generally; and the Liberal publication department issued a leaflet to the effect that "The men who cheered the defeat can be made proud of their connection with Great Britain and the Empire by a gift . . . of Home Rule." But apprehension and disquietude would not down.

It was thought that disloyalty appeared particularly in the attitude of some Irishmen towards the Germans. "Should they land in Ireland, they will be received with willing hearts and strong hands," said the *Kilkenny People* in 1909. Four

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years later the following notice is said to have been sent broadcast through Ireland:

"The mighty British Empire is on the verge of destruction. . . . The English live in daily terror of Germany. War between England and Germany is at hand. England's cowardly and degenerate population won't make soldiers. . . . What will England do? She'll get Irish Fools to join her Army and Navy, send them to fight and die for her Empire. . . . Stand aside and have your revenge. Without Ireland's help England will go down before Germany. . . . The English know this and they have offered us a bribe and call it Home Rule."

"It is not without interest," wrote Bernhardi about the same time, "to know that, if ever it comes to war with England, Germany will have allies in the enemy's camp."

There was belief that his feeling arose not merely from hatred and dislike which would disappear when Ireland received the Home Rule which she desired; since it was not Home Rule alone which she sought, but complete separation and entire independence. In 1911 the monument unveiled to Parnell in Dublin contained in its inscription: "We have never attempted to fix the *Ne plus ultra* to the progress of Ireland's nationhood and we never shall." "I promise to work for the Independence of Ireland," ran the constitution of the Irish National Boy Scouts. "Let us," said a speaker at Kilkenny in 1912, "pray for the time when the exigencies of the Pirate Empire will give us a fighting chance to break the last link of the chains that bind us." It was said that even Mr. Redmond in some of his American speeches looked forward to the goal of national Independence. Ireland did not desire to remain part of the British Empire like Canada and other self-governing dominions, but wished for individuality like Germany or France. In 1912 an Irish newspaper declared that it had nothing but loathing and contempt for the men who prated about "this Home Rule Bill uniting us in bonds of love and loyalty to the British Empire." Some believed what John Bright had said long before, that if the Irish had their way they would make of the country one of the states of the American Union.

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These forebodings might be of things not to come, but England must take every precaution to avoid their fulfilment. Stretching from Shetland to Dover, the British Isles occupied the strongest strategical position in Europe. They mounted guard over the northern countries, and the navy watching the outlets from the North Sea made it impossible for their most dangerous naval competitors to attack the trade routes along which came the necessary supplies of food; while the open coast to the west gave free access to all of the highways of the world. But if Ireland were in possession of a foreign power, or in time of war acted with it, Great Britain would hold the weakest position in Europe, because she would lie between enemies in Ireland and others on the continent. Then enemy cruisers and submarines issuing from any of the numerous bays between Queenstown and Lough Swilly could cut across the ocean lanes and stop supplies of food and raw materials vitally necessary. Admiral Mahan had expressed his opinion:

"It is impossible for a military man, or a statesman with appreciation of military conditions, to look at the map and not perceive that the ambition of Irish Separatists, if realized, would be even more threatening to the national life of Great Britain than the secession of the South was to that of the American Union. . . . Ireland, by geographical position, lies across and controls the communications of Great Britain with the outside world, save only . . . the North Sea and the Baltic. . . ."

And what had the north not been willing to do for the preservation of the Union?

A leaflet published by the National Union of Conservative and Constitutional Associations declared that Home Rule meant really the erection of a hostile state within 60 miles of England, a perpetual source of alarm in case of continental complications, an enemy in the rear of Great Britain always ready to assist her foes, and that it involved a weakening of her defensive force, the necessity of maintaining a powerful fleet in St. George's Channel, and a large increase in the British army. In 1912 Admiral Lord Charles Beresford explained that in the great sea

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wars of the past Ireland had always been regarded as a possible base for flank attack upon England. In the wars with France in the seventeenth and eighteenth centuries this had always been true. It was so at the present time. And even if Ireland were not hostile, but merely afforded shelter and supplies to hostile warships, immense damage could be done in a short time, and it would be necessary for the admiralty to detach a squadron for the purpose of watching the whole of Ireland.

At the same time Earl Percy pointed out that no scheme of Home Rule could be judged without considering it in connection with the changes which had resulted from the fundamental alteration of the balance of power in Europe seen now in these latter days. The future, he thought, was very dark; the nations had set out on the march to Armageddon; war could not be long delayed, and there was little time for England to put her house in order. The strategical value of Ireland would be profoundly affected by separation from England, and this would constitute a grave source of weakness even if a comparatively loyal government were installed. "In any attack by an enemy on our commerce, Ireland will become of supreme importance. . . . In the second, if not in the first, stage of European war . . . the closest coöperation between the governments of Ireland and England will be essential."

In a military sense the two countries were one area of operations and supply, and at such a time the dissolution of the union binding together the very heart of the empire would be a strategic mistake involving disaster which could not be exaggerated.

It was often said that in recent years it had been the practice of the British Empire to grant self-government to great colonies, such as Canada, Australia, and South Africa, always with good results, and the same should be done for Ireland, where the like happy outcome would follow. But it was answered that here the colonial analogy was fallacious, since there was a fundamental difference between the position of Ireland and that of any of the twenty-eight communities which now had home rule. Those colonies were thousands of miles away; Ireland was near at hand. As yet distance made it impossible for the col-

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onies to be represented in the imperial parliament, and they had no representatives there; but Ireland had more than her population warranted. The colonies had a vast future, and hereafter were destined to rival the United Kingdom; Ireland had no future apart from Great Britain. Irish finance was inseparably bound up with that of England; but such was not true of the colonies. There no important minorities desired to continue under the British parliament; in Ireland there was Ulster. The colonies were practically independent, their loyalty was unquestioned, and they could not if they would directly threaten the safety of the British Isles; but a hostile Ireland could stop the food of Great Britain, and could give to an enemy a base of operations against the most vital parts of the commonwealth.

These arguments were advanced by one party to the great dispute. The writer has given them as he found them. It must be that many spoke in narrowness and passion, or stirred by blind prejudice, or aroused in behalf of their interest; but no one unprejudiced can fail to see that others pleaded honestly, with highest motive and best good faith. Beyond doubt many of the propositions were true and not to be neglected by those who had the interests of their country at heart. But one makes this admission sadly. If only things could have been different! If circumstances could have been what they are not! If mistakes in the past had been avoided! How well if the wisdom of one people and the good fortune of the other had obviated these difficulties or solved them long ago. The interests of the two peoples in world affairs are inseparable, and the two should be inseparable in the crisis now before them.

Those who declared that Irishmen really wished independence and complete separation from England have been justified beyond expectation by the Sinn Fein movement and the Easter rising at Dublin; while they who contended for the rights of Ulster merely spoke for what the northern inhabitants seemed sternly resolved to uphold. But there must be now a great number of moderate and liberal people both in England and in all parts of Ireland willing to compromise, anxious to con-

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struct, and filled with fine faith in the future. It would be most rash to make predictions in the midst of this fateful and difficult present, but may it not indeed be that hereafter these men and women can bring to fulfilment the just aspirations of Ireland in such manner that old dislike and suspicion may be changed to sincere good faith and good will?

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THE MERIT SYSTEM AND THE HIGHER OFFICES

JOHN A. McILHENNY

There is no question of national policy so firmly established as the merit system, and on it must finally rest our political and administrative fabric. The system is fundamental, as it underlies all other political reforms. Its processes, therefore, should be adequate and be made to ensure results which will keep pace with the ever increasing functions of government. These processes are especially important in supplying the needs of appointment to the higher technical and administrative positions. The extension of the merit system to higher positions is a logical development of its application to lower positions. The same reasons which require tests of fitness in the latter apply even more strongly to such of the higher positions as have nothing to do with the policies of the administration. Such an extension would have the additional and great advantage that the more important the office affected the more effective must the extension necessarily be in divorcing the office from politics. Character and capacity are being secured in the great body of public employment, and it only remains to take the higher officials whose duties are purely administrative, federal, state and municipal, out of politics, to establish finally in the minds of the people the fundamental truth that positions under a democratic government belong to the people and not to the political party temporarily in power. The higher subordinates in the government employ have administrative control of the work on which our economic structure and our industrial success largely depend; and it must follow that their selection should be made upon proved merit, if that degree of administrative success is to be obtained which the people of this country have a right to expect. It is through the highest officials down to the humblest employees that the government serves the people. Practical governing

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is administration and administration is the work of the civil service. Whatever will increase the integrity and efficiency of the body of employees will increase the administrative energy of government and further the ends for which the government is instituted. The power of the government to carry on plans for the public good depends upon the intelligence and efficiency of the persons whose services it must employ. The efficiency of the civil service therefore touches to the utmost limits all that the government may be called upon to do.

The development and improvement of the practical methods of the merit system in recent years have been rapid not merely in the federal service, but in the great municipalities of the country. Of the whole number of public employees in the United States, federal, state, county, municipal, and village, not far from 600,000 or nearly two-thirds of the entire number, are withdrawn from the spoils system and appointed upon a merit basis, under laws intended to regulate and improve the public service. The experience obtained in the administration of the merit system by civil service commissions, under varying conditions in ten states and more than 250 municipal services in addition to the federal service, has demonstrated the value and the success of the system in obtaining well qualified persons for all classes of positions, including the higher expert positions.

The popular approval of the system of competitive examinations as a means of producing increased economy and efficiency and of suppressing abuses due to improper political influences is shown in the platforms adopted by the different political parties during the campaigns of more than a quarter of a century. The principles of the competitive system are approved by the whole country without distinctions of political faith. This unanimity indicates that the American people are satisfied with the results of the system and marks the cessation of all open organized opposition to it.

The merit system was applied in its beginnings, a third of a century ago, to the lower grades, and from time to time was extended upward to positions of greater importance. In cities, notably in Chicago and New York, it has been extended to heads

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of bureaus and in the federal service to chief clerks and chiefs of divisions, but not to heads of departments and bureaus or other positions requiring confirmation by the senate, of which there are more than 10,000. The President is given the power by Congress to extend the system to all positions in the executive civil service other than positions requiring confirmation by the senate, and within this field he has classified nearly all positions to which competition can be well applied. Further extension of the system therefore rests with Congress in authorizing the President to embrace within its scope the positions which, although requiring confirmation, are purely administrative in their nature and have no duties in the shaping of policies, such as postmasters, collectors of customs and of internal revenue, and chiefs of bureaus.

It was the intent of Congress, as shown in the debates on the passage of the civil service act in 1883, that the merit system should be susceptible of application, in the discretion of the President, to the entire executive civil service apart from mere laborers and presidential officers. The President, however, in the first civil service rules of 1883 excepted from examination large numbers of positions in the higher grades, such as cashiers, chief clerks and chiefs of divisions. Prior to the civil service act, while appointments had little regard to fitness, they were made to the lower grades, the higher grades being filled by promotion, thus ensuring a certain degree of experience in supervisory positions. Under the new system appointments to the lower grades could only be made through competition, while the higher grades were left open to patronage, thus blocking promotions. The pressure for spoils at each change of administration forced the appointment of inexperienced political or personal favorites in the chief positions, demoralizing the service and largely neutralizing the good effects of the examinations for the lower grades.

While these positions of chief clerk and chief of division have since been made competitive and thus opened to promotion, the presidential positions of postmaster, collector and chief of bureau still remained subject to patronage, with the same de-

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moralizing effect in preventing them from being filled by promotion. The further step remains to be taken of placing them also in the competitive class, just as has been done in the case of the chief clerks, and with the same salutary results. Even though the subordinates are appointed upon merit, it is impossible for the merit system to achieve full measure of success so long as the officers in charge are appointed mainly for political reasons and are changed with each change of administration.

The higher positions, although few in number compared with the vast aggregate of offices, are important beyond the measure of their numbers. These positions have great responsibilities and power. They are tempting as political prizes. The degree of economy and efficiency with which the public service is conducted largely depends upon the character of its occupants. The small number of positions which are policy determining should, of course, remain subject to unrestricted appointment by the President; but the purely administrative offices of high rank, such as the heads of bureaus, should be open as rewards of distinction for the occupants of the lower positions. It is only by offering such rewards that the public service can secure and retain men of ability, and the fact of establishing such careers would inspire employees throughout the service.

In his last annual report Postmaster-general Burleson recommends the extension of the merit system within the postal service to all positions other than that of postmaster-general. He said:

"If I could, I would cover under the classified civil service every position in the postal establishment save that of postmaster-general. The ideal system would be one under which every postmaster in the country, if by merit he could earn it, would have within his reach the postmastership of the largest city within the United States; a system under which every postal employee throughout the county, if by ability, fitness and faithfulness he could demonstrate his merit, would have the very highest places in the service and in the department open to him through just and intelligent promotions."

In a letter in the press of November 6, 1916, President Wilson said that he was thoroughly in accord with the recommendation

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of the postmaster-general, that it had his hearty approval and that when the positions of presidential postmasters were classified the postmaster-general would be able to fill many of them by promotion from the clerical grades, also by the promotion of postmasters who have demonstrated their ability from a smaller office to one of greater importance.

By an executive order, which became effective April 1, 1917, appointments of presidential postmasters to fill vacancies are hereafter to be based on competitive examination.

President Taft in his annual message of 1910 stated that he entertained the profound conviction that it would greatly aid the cause of economical government and better politics if Congress would enact a law granting the executive the power to include in the classified service all local officers under the treasury department, the department of justice, the post office department, the department of the interior, and the department of commerce and labor, appointments of whom now require the confirmation of the senate, and that upon such classification the advice and consent of the senate should cease to be required in such appointments. He stated that the loss to the government from the present patronage method of filling these positions amounts to at least $10,000,000 annually, and that it is not to be doubted that where no saving would result the classification of the local officers would increase the efficiency of the service. Following the President's recommendation, bills were introduced in Congress to give it effect. In an address at a convention of internal-revenue officers at Detroit on September 18, 1911, President Taft was quoted in the public press as saying:

"They have charged me with using patronage to accomplish something. If I have, I have not been conscious of it. But I challenge the men who make the charge to come forward and join with me in legislation which will enable me to put every local officer, be he postmaster, internal-revenue collector, customs collector, or anybody else filling an office of the United States in any of the States of the Union, under classified civil service. . . . .

"If I had the making of the laws of this country the first

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thing I would do would be to include in the civil service every collector, deputy collector, and everybody connected with the internal-revenue system in local collections, and put the whole service on an effective, nonpartisan basis. I know that it would be a source of economy, I know that it would give the President a great deal more of time to devote to other duties; I know that it would save a good many congressmen their seats; and I know that it would tend to the elevation of the public service."

As long as so large a proportion of these higher administrative positions remain unclassified, to be filled from the outside without promotion, the classified service will not offer a career in competition with such outside fields of employment as are organized and conducted upon a merit basis and which have systems of retirement upon disability or superannuation. In this respect the civil service remains inferior to the service of many business establishments which assure promotion for merit to the high-salaried positions and which give retiring allowances; and the government cannot hope to secure and retain the services of an equally intelligent and ambitious class of persons while these conditions exist. The fact that higher positions are not open to promotion deters many of the better class of men from entering the examinations for appointment. Moreover, there is an increasing tendency on the part of the most capable persons who enter the service to resign for employment in fields in which there is better organization and greater opportunity for advancement. This constant depletion of the service means serious financial loss to the government. The civil service is inferior to the military and naval services in this regard, since it does not offer the same opportunities of advancement and retirement. Again, where the higher positions are filled by political influence and when the men filling them are, as they generally are, active in political work, it is inevitable that the minor force will fall under detrimental political influences.

Within what is known as the federal classified service the merit system has been applied with conspicuous success, and it is not my purpose to consider in this place the application of that system within this field further than as it may bear upon

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the application of that system to the higher positions yet untouched. It has been amply demonstrated that the extension of the merit system to the positions which are left to be filled upon a partisan basis is practicable, and the force of public opinion may confidently be directed to that end. There is abundant evidence that in those parts of the service to which the civil service law has been applied the government has been able to effect large savings. More and better work is being done with fewer employees and done far more economically.

These higher positions may be considered under two heads. The first embraces those positions the duties of which are concerned with the discipline of the force and the decision of questions arising in the work of that force. These positions comprise postmasters, collectors of customs and of internal revenue, heads of nontechnical bureaus and the like. The qualifications required are a knowledge of the laws, decisions, and the procedure governing the business, together with a high measure of executive ability. The same reasons which require tests of merit for entrance to competitive positions apply even more strongly to these higher positions which have nothing to do with the policies of the administration. In outside business, positions of this character would usually be filled by promotion, for the reason that the requisite information, skill and familiarity with the office traditions are acquired by training in the lower positions. In the government service, however, it is not ordinarily possible to do this. In the first place, a classified employee with an assured tenure would hesitate to accept a position of precarious political tenure; and in the second place, the position would be demanded for an outsider as the fruit of party victory. If these positions were put into the classified service, to be filled usually by promotion or transfer, a worthy career would be opened to employees trained in the lower grades. This would merely be a development and wider application of the principle of filling such administrative positions as chief clerk and chief of division by promotion upon proved merit, and thus be distinctly in the interest of efficiency, stability, and a higher standard in the personnel of the service.

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The second class of higher positions is confined to those requiring professional, scientific, or expert attainments, for which the material available for promotion is more restricted and where competition may be applied with invariable success. The requisite knowledge and ability for these positions are susceptible of precise definition and the degree of their possession can be estimated with close approximation to the truth. The range in character of these positions is as broad as the field of human endeavor. Entrance to the tests is guarded by certain reasonable antecedent conditions, such as the degree of education or practice of the profession, business training and experience. Thus only those who are presumably fit may enter the competition. If the position requires not merely technical education but a degree of distinction or success in practice, then a non-assembled examination is given, so called since it does not require the competitors to appear at any place or to answer technical questions. Instead, they are called upon to furnish, under oath, a detailed statement of their education and experience, including all the work they have done since graduation. They may also be asked to submit an original thesis or published works. They must give the names of persons who are competent to testify as to their experience and personal fitness. Confidential inquiry is made from various sources, including all persons referred to by the applicant. In this way accurate and discriminating testimony is obtained. With the aid of examiners skilled in the weighing of evidence of this kind, who are themselves specialists in the subjects under consideration, it is possible to give a percentage rating upon the estimate of the career and accomplishments of each applicant which serves as an accurate measure of his relative fitness. This form of examination meets the objection urged against examinations consisting of scholastic subjects—that they fail to test fitness where achievement and the personal element are important—and its development has equipped the merit system to deal effectively with presidential offices where not filled by promotion or transfer. These tests have been successful to a marked degree in filling positions requiring not only the highest expert knowledge but the highest expert administrative ability.

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It has been said that men eminent in a profession or science will not enter a competition. This would no doubt be true if the applicants were subjected to a written examination on academic questions; but where the test is directed solely to the training and experience of the competitors, and passed upon by experts of the highest standing in their professions, no such disinclination is apparent. Men of attainments and standing in their profession do not hesitate to make formal application in response to announcements of this type of examinations. Every available means is resorted to in order to learn of all such persons, and then by direct request to induce them to submit the requisite record of their education, training and experience. Mailing lists are kept of educational institutions, periodicals, and class publications, and announcements of examinations are sent to all whose students or subscribers may furnish properly qualified applicants. In addition, the announcements are posted in 1,900 cities throughout the country and are furnished to press associations and local newspapers. In connection with examinations in which difficulty is experienced in obtaining enough qualified persons to meet the demands of the service, special publicity campaigns are conducted. Posters are sometimes prepared calling attention to the opportunities in the government service for persons qualified in certain branches, and these posters are sent to the post offices of cities where the examinations are to be held and to every school in the country known to teach these subjects. At times circular letters are addressed to all the members of a scientific society, calling attention to an examination in the branch of science in which the society is interested. These announcements set forth the unusual opportunity for research and broadening of training offered in the positions and not found in private employment.

The examination is as thorough as would ordinarily be made by a board of trustees or governing officers of an educational institution or a great corporation in the filling of a professional or ministerial position, since it is an exhaustive inquiry into the history and experience of the applicants, including confidential communication with persons and institutions having first-hand

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knowledge of them. In these confidential inquiries close and pertinent questions are asked as to the qualifications and fitness of the applicants, and as a rule the responses are accurate and discriminating. This method is as thorough and exact and more comprehensive than the private employer uses. The commission with 2600 boards of examiners throughout the country may avail itself of all the federal resources and has a network of machinery incomparably superior to any corporation.

It may be objected that the personal equation is lost in the character of this examination and that the ordinary employer emphasizes the personal impression produced upon him by the applicant. The written method of inquiry, however, probably has fewer failures than where judgment is based upon personal impression. There are positions where personal characteristics, such as appearance, bearing, manners, force, tact, and ability to express ideas clearly and forcibly, are important. Illustrations of such positions are those requiring executive qualifications or where the incumbent represents the department in dealing with the public. For such positions oral tests are given which permit a personal inspection of applicants. In such tests there is a board of examiners carefully selected because of their sound judgment, appreciation of the requirements of the position to be filled, and ability to reach just and impartial conclusions. They must be of such unimpeachable character as to place them beyond the suspicion of unfairness. This test is being successfully applied in examinations for the consular and diplomatic services as well as for positions in the classified service.

An objection which has been urged against the classification of higher positions is that executive ability, trustworthiness and character cannot be tested by examination, and this in face of the fact that nothing could be more irrelevant than the test of political opinions and party work. The merit system excludes unfit men and aims under fixed and intelligible rules to secure the most fit and protect the public service from favoritism and personal and partisan abuses. The repute and records of men who have executive ability can be as well ascertained by merit tests systematically conducted as by an appointing officer who

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rarely has a free hand in selection, the real selection being made by influential and often obscure persons controlling the patronage. The degree of trustworthiness is apparent from the careers of candidates and is inferred from the confidential testimony of vouchers, given in response to comprehensive and searching inquiries, as to industry, temperament and personal habits. This record of the candidate shows his character and habits and enables an estimate to be formed of his moral qualities. Instead of the limited field of selection open to the appointing officer, the merit system opens the appointment to all citizens having the requisite qualifications and confines a right of choice in the appointing officer to the three persons who have demonstrated their merit and fitness in the highest degree. The appointment, therefore, instead of being narrowed to a choice from personal acquaintance, uncertain recommendations or to the caprice of party spoils, is determined impartially by nonpartisan tests of character and capacity.

These methods have been successfully applied to positions having executive functions of the highest importance and with a great range of duties, such as in state services to superintendents of hospitals for the insane, with thousands of inmates. In the federal service examinations have been held for the engineers and accountants to appraise the value of the property of common carriers of the United States. Forty-six distinct kinds of examination were held, most of them for technical positions of the highest order. Eighty-seven appointments were made at $3000 to $4800 per annum. In commenting on the force thus assembled, officials of the interstate commerce commission have stated that through these examinations more satisfactory service has been obtained than could have been secured through any other agency; that the men appointed are of the highest order in training and ability and are exceptionally efficient in the performance of their duties. The men engaged in the physical valuation of railroads constitute one of the most remarkable engineering forces ever assembled, and their selection through competitive examination is a striking illustration of the efficiency of the merit system in meeting the demands of

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the public service. Examinations have also been held for the positions of assistant director of public roads, senior highway engineer, chief metallurgist, assistant chief of the bureau of chemistry, chief irrigation engineer, social service expert, sanitarian, supervising architect, chief of the division of vital statistics and hundreds of others. For illustration, in an examination for chief of the editorial division of the bureau of foreign and domestic commerce, there was a preliminary requirement of responsible editorial experience. Those applicants who met the preliminary standard were given actual tests which corresponded closely to the work required in the position; they were sent material to edit, and were provided with copies of several publications for constructive criticism of editorial methods, and they were also required to write and submit a thesis on a commercial subject. As in the usual form of nonassembled examination, the administrative ability of the candidates was given consideration in the evidence secured as to their education, experience and fitness.

With a larger proportion each year in the number of persons in the service appointed upon merit test there is an ampler field from which it is possible to recruit the higher positions by promotion. With the lessening of political influences and the more extensive application of merit principles a body of workers is being developed which is mentally and physically better able to meet the increasing demands of official life and to deal with the complex problems in the widening fields provided by new legislation. The public service must be made a worthy career, be given stability independent of changes of administration, and positions other than those which are policy determining opened as rewards for efficient service.

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THE VETO POWER OF THE STATE GOVERNOR[1]

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The term "veto" has been traced from the power of the tribune of the plebs in ancient Rome to annul or suspend the acts of other public authorities. From the establishment of the Roman tribune, that official had the right of intercession (*intercessio*), to cancel any command of a consul which infringed the liberties of a citizen; and this was gradually extended to other administrative acts and even to decrees of the senate.[2] The word *veto* (I forbid) was at least occasionally used by the tribune in such cases.

But historically what is called the veto power of American executives is derived from the legislative power of the British Crown. Until the fifteenth century statutes in England were enacted by the king on his own initiative or in response to petitions. From that time parliament presented bills in place of petitions; and statutes were enacted by the king "by and with the advice and consent of the lords . . . . and the commons . . . . and by the authority of the same." The king's assent was still necessary; and without this assent a bill was not law. For two hundred years the Crown continued to exercise the negative power of declining to accept bills, not by any formal act of disapproval, but by the polite response in old Norman French, "*le roy s'avisera.*" Since the beginning of the eighteenth century no bill which has passed parliament has failed to receive the royal assent; but the old form of enacting laws is still in use.

In the English colonies in America, with the establishment of representative assemblies these bodies were vested with and

[1] A paper read at the annual meeting of the American Political Science Association, at Cincinnati, December, 1916.

[2] How and Leigh: *History of Rome,* pp. 54, 72.

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exercised powers of local legislation, but subject in most cases to the approval of the governor or proprietor, and in the royal colonies subject also to the disapproval of the king. In the charter colonies, the elected governors had no power of disapproval. In the proprietary colonies, the proprietor exercised the power of disapproval; and in his absence this power was delegated to his deputy. In the royal colonies, the appointed governors had an absolute veto on the acts of the assembly, while acts approved by the governor might afterwards be disallowed by the king, and some acts required the approval of the king in council.[3]

It is worth noting, however, that in the enacting clauses of laws of some of the colonies neither the king, the proprietor nor the governor appears as part of the law making power. Statutes were passed in the name of the assemblies, or with the indefinite phrase, "Be it enacted . . . ." This change of form, perhaps insensibly, tended to alter the character of the executive power from the merely negative result of inaction to a positive expression of disapproval.

The power of disapproving colonial laws was actively used by both the governors and the home government. In New York, of the bills passed by the assembly during the colonial period eight were disapproved by the governor and sixteen were disallowed by the Crown. This was one of the sources of irritation between the colonies and the mother country; and the disallowance of laws by the king in council is mentioned first in the list of grievances in the Declaration of Independence.

The opposition to the governor and to the royal veto which had developed during the colonial period was reflected in the early state constitutions. These documents made the legislatures the main authority in the state government, and narrowly restricted the powers of the executive. In the case of the veto power, the doctrine of the separation of powers was probably another factor in excluding the governor in most states from

[3] E. B. Greene: *The Provincial Governor*, pp. 6, 13–14, 162–165. In Pennsylvania (a proprietary colony) the power of the king in council to disapprove acts of the colonial assembly was also reserved.

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even a negative voice in legislation. Only three of the thirteen original states made any provision in their first state constitutions for a veto on acts of the legislature. The first of these was the temporary constitution of South Carolina of 1776, which continued the absolute veto of the chief executive.[4] But two years later a revised constitution of that state omitted the veto power entirely. New York and Massachusetts each provided for a modified and qualified negative on legislation.

Under the New York constitution of 1777, provision was made for a council of revision, composed of the governor, the chancellor and the judges of the supreme court. All bills passed by the legislature were to be referred to this council, which could, within ten days, return any bill with objections in writing to the legislature, but if repassed by a two-thirds vote of all the members of each house such a bill would become law. Bills not returned within ten days—or in case of adjournment at the beginning of the next session—became law.

In its first state constitution, adopted in 1780, Massachusetts revived the veto power of the governor in a limited form. All bills and resolves were required to be submitted to the governor for approval or disapproval. Those disapproved by the governor within five days should be returned to the legislature, with his objections; and upon reconsideration and repassage by two-thirds of the members of each house would become law.

The veto power under both the New York and the Massachusetts constitutions differed from that of colonial days in two important respects: the time for consideration and disapproval was limited; and the legislature had power to make a bill law after its disapproval, by repassing it with a two-thirds vote. The New York provision contained a further change from the former methods by vesting the power of disapproval in the council of revision.

In the Constitution of the United States, the President was vested with a qualified negative on legislation, similar in the main to the power of the governor of Massachusetts. This

[4] The President, elected by the general asssembly, was recognized as part of the legislative authority with power to approve or to reject bills.

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was undoubtedly a factor in the gradual extension of the veto power of the state governors. Before the end of the eighteenth century three additional original states had adopted substantially the Massachusetts form of veto, Georgia in 1789, Pennsylvania in 1790, and New Hampshire in 1792. But from this time until after the civil war the veto power gained but slowly in the older states. In 1818 Connecticut gave a limited veto to the governor; in 1821 New York transferred the power from the council of revision to the governor; and in 1844 New Jersey adopted a provision similar to that in New York; but in all these cases the governor's power was less effective than in Massachusetts, since a majority vote of the legislature or two-thirds of the members present was sufficient to pass a bill over the disapproval of the governor.

Thus by the middle of the century the governor's veto power was established in most of the North Atlantic group of states; but it was still lacking in Rhode Island, Delaware and the four other original states to the south. Nor was this due altogether to difficulties in the process of making changes in the state constitutions, as new or revised constitutions were adopted during this period by four of these states—Rhode Island, Delaware, Maryland and Virginia.[5]

In the newly admitted states, the adoption of the governor's veto was also for a time uncertain. Kentucky, admitted in 1791, gave the governor a qualified veto. Vermont in 1793 gave the governor and council power to propose amendments to bills, and if these were not accepted to suspend the passage until the next session of the legislature. But Tennessee, admitted in 1796, and Ohio in 1802, made no provision for the governor's action on legislation. Indeed, no state conferred the power of veto on the governor between 1793 and 1812. This condition may be related to the rise of the Jeffersonian Republicans in opposition to the centralizing policy of the Federalists.

From the admission of Louisiana in 1812, however, every new state admitted to the Union, except West Virginia in 1862, has

[5] The Maryland constitution of 1851 provided that all bills passed by the legislature should be presented to the governor, "who shall sign the same."

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provided for some review and veto of legislative bills. The general adoption of the veto in the new states, in the south as well as in the north, may be due in part to the fact that Congress gave the governors of the territories this power over the measures of the territorial legislatures. At first the veto power of the territorial governors was complete; but beginning with the Florida act of 1822 it gradually became customary to provide that a two-thirds vote of the territorial assembly might pass a bill over the governor's disapproval.

Since the civil war the governor's veto has also been gradually extended to all but one of the other states. Maryland provided for it in the constitution of 1867. Three others adopted the veto in their reconstruction constitutions—South Carolina in 1868, and Tennessee and Virginia in 1870. West Virginia made provision for the governor's veto in 1872, and Delaware in 1879. Ohio was added in 1902. Even Rhode Island joined the great majority of states in 1909; leaving North Carolina as the only state which still fails to give the governor this power.

This sketch of the extension of the veto power throughout the states has not taken into account the variations in the constitutional provisions, which materially affect the value and effectiveness of the power. To appreciate these differences, it is necessary to analyze more closely the constitutional provisions and to trace the development of several factors.

In beginning this analysis, it may be recalled that the first state constitutions offered two alternatives as to the authority which should exercise the power. In New York it was given to a council of revision, embracing the judges of the highest court. In Massachusetts it was conferred on the governor alone. Only two states have in any measure followed the New York precedent. Vermont in 1793 authorized the governor and council to propose amendments to bills and to suspend their passage. Illinois in 1818 established a council of revision similar to that of New York, with power to disapprove bills and return them to the legislature for reconsideration. Before 1850, all three of these states had vested the veto power in the governor alone —New York in 1821, Vermont in 1836, and Illinois in 1848.

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All of the other states have conferred the power of veto, as soon as established, on the governor alone.

The New York and Massachusetts veto provisions also differed in the time given to the governor for consideration. New York gave the council of revision ten days, exclusive of Sundays, with a proviso that if the legislature by adjournment should prevent the return of the bills at the end of the ten day period, they might be returned on the first day of the following session. Massachusetts gave the governor only five days for the consideration of bills, and made no provision for the contingency of adjournment before the end of that time.

About half of the states have followed the Massachusetts provision as to the time granted for considering bills during the session of the legislature. In eleven states the governor has only three days; in twenty-two states, five days; in three states, six days; and in eleven states, ten days. The latter group includes most of the largest states—New York, Pennsylvania, Illinois, Ohio, Missouri, Texas, Kentucky, California,—and also Colorado, Delaware, and Utah. Eight states have altered the period allowed, four increasing the time and four decreasing it.

Of more importance is the time allowed for considering bills at the close of the session, in view of the large proportion of bills passed just before adjournment. Seven other states in their early veto provisions followed the New York provision that bills disapproved after adjournment should be returned at the next session.[6] But five of the eight later established a definite limit after adjournment—leaving the early New York rule now in force only in Maine, Mississippi and South Carolina. Four other states provide that bills disapproved within a specified time after adjournment shall be returned to the legislature at its next session,—Ohio, Indiana, Florida and Nevada.

Under the first Massachusetts provision bills could not be vetoed after the adjournment of the legislature. In 1820 an amendment to the Massachusetts provision was adopted, similar to the provision in the United States Constitution, that if the

[6] Pennsylvania, Kentucky, Indiana, Illinois, Maine, South Carolina and Mississippi.

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return of bills should be prevented by the adjournment of the legislative body, they should not become law. Similar provisions, permitting the so-called "pocket veto," were adopted in twenty-two states; but only four of these have been adopted since the civil war. Many of these states have later adopted other provisions, and only eleven states now have provisions similar to those of the Constitution of the United States.[7] It has been urged that under such provisions the governor has no authority to sign bills after the adjournment of the legislature. But the prevailing opinion is that the governor may do so within the same period as he has during the legislative session.[8]

In 1850 Michigan established another precedent in this matter by giving the governor the same time (five days) for the consideration of bills after the close of the session as he had during the session. From this time most of the new states and many of the older states adopted similar provisions; and in thirty-four states the governor is now given a definite time in which to approve or disapprove bills after the adjournment of the legislature.

Moreover, in most of these states the governor has now a longer time to consider bills after the adjournment than he has during the session; and this is most common in the states where only a few days are given. In seven of these thirty-four states the governor has not more than six days after adjournment to act on legislative bills,[9] and in fourteen states he has ten days,[10] but in thirteen states he is now given from fifteen to thirty days after the close of the session to consider bills.[11]

Still further these states differ among themselves in the effect

[7] New Hampshire, Vermont, Massachusetts, Connecticut, New Jersey, Maryland, Georgia, Louisiana, Tennessee, Wisconsin, Kansas.

[8] *American Law Review*, vol. 41, p. 231; Lankford v. Somerset Co., 73 Md. 105, 115; Gray v. McLendon, 134, Ga. 244.

[9] Minnesota, 3 days; Indiana, Michigan, Nebraska, Oregon and West Virginia, each 5 days; New Mexico, 6 days.

[10] Alabama, Arizona, California, Florida, Idaho, Illinois, Kentucky, Nevada, Ohio, Rhode Island, South Dakota, Utah, Virginia and Washington.

[11] Montana, North Dakota, Oklahoma and Wyoming, 15 days; Arkansas and Texas, 20 days; New York, Pennsylvania, Missouri, Iowa, Colorado, California and Delaware, 30 days.

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of the governor's failure to act on bills within the time specified after adjournment. In ten states bills do not become law unless signed by the governor before the required limit;[12] so that in these states, as in the eleven where no time is prescribed after adjournment, the governor has the power of "pocket veto,"—of veto by inaction. In twenty-three states such bills become law unless the governor files his objections in the period named. The Iowa and Missouri constitutions provide that the governor may either approve or disapprove bills within the limit of thirty days; but do not express clearly the result if the governor fails to act. In Mississippi no bill may be approved when the legislature is not in session, and in West Virginia appropriations may not be vetoed after the adjournment of the legislature.[13]

Another factor affecting the significance of the governor's power of disapproving bills is the size of the vote required to repass and enact as law a bill disapproved. No other state has followed the precedent of colonial times and that of the first temporary constitution of South Carolina in giving the governor an absolute veto. The first New York and Massachusetts constitutions agreed in requiring a two-thirds vote of the members of each house to overrule the veto; and this has been the maximum and is now the prevailing requirement. But the Constitution of the United States provides that a two-thirds vote of the members *present* in each house may override the President's veto; and many of the states have provided a similar or even a less stringent requirement. Of the twenty-three states which provided for some form of veto before the civil war, fourteen required a two-thirds vote to repass disapproved bills, but six of these required only two-thirds of the members present. Nine states provided that bills disapproved could be made law by a majority vote,—eight of these requiring a majority of all the members, and one, Connecticut, requiring only a majority of those present. Moreover, during this period two states lowered

[12] New York, Delaware, Virginia, Alabama, Michigan, Montana, Oklahoma, Arizona, New Mexico, and California.

[13] May v. Topping, 65 W. Va. 656, 64 S. E. 848; Woodall v. Darst, 70 W. Va. 350, 77 S. E. 264; 44 L. R. A., n. s. 83 (1913).

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the requirement. Kentucky in 1799 changed the vote necessary from two-thirds to a majority of the total membership. New York in 1821 in transferring the veto power from the council of revision to the governor altered the vote required to override the veto from two-thirds of the total membership in each house to two-thirds of those present. Michigan in 1850 increased the requirement from two-thirds of those present to two-thirds of the total membership.

Since the civil war the tendency has been to strengthen the veto power by increasing the vote needed to pass bills over the governor's disapproval. Only two states establishing the veto power since then permit a bare majority vote to overrule the veto. A number of states have added to their former requirements. Florida in 1868, Illinois in 1870, and Missouri in 1875 changed from a majority to a two-thirds vote,—the two latter states requiring two-thirds of the total membership. In 1874 New York returned to its older rule requiring two-thirds of the entire membership to overrule the governor's veto; and in 1879 California made a similar change, from two-thirds of those present to two-thirds of the total. In 1902 Virginia provided that the two-thirds of those present must be not less than a majority of all the members. And Vermont in 1913 altered its requirements from a majority of the total membership to two-thirds of those present. During this period only one state has reduced the vote needed. Ohio, which adopted the veto power in 1902 subject to a two-thirds vote, amended the provision in 1912 so that bills vetoed might become law by a three-fifths vote of each house.

At the present time one state, Connecticut, permits a veto to be overruled by a mere majority of a quorum in each house; and seven others are satisfied with a majority of all the members.[14] Rhode Island requires three-fifths of the members present and voting; and four other states require three-fifths of the members elected,[15] —one of these, Ohio, adding that a bill may

[14] New Jersey, Indiana, West Virginia, Kentucky, Tennessee, Alabama and Arkansas.

[15] Delaware, Maryland, Ohio and Nebraska.

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not be repassed by a smaller vote than is required for original passage. Thirty-four states require a two-thirds vote in each house,—twelve basing this on the number present, and twenty-two demanding two-thirds of the total membership.[16] The last group includes most of the larger states.

The scope of the veto power also differs in the several states. In the first New York constitution, the veto power was provided only for legislative bills, making no provision as to orders, resolutions or other votes of the legislative houses not in the form of bills. The Massachusetts constitution provided that no bill *or resolve* of either house shall become law without submission to the governor. In one-half of the states,[17] the governor's veto is provided only for bills; and apparently in these states other votes, orders or resolutions of the legislature are not subject to executive disapproval. In the other states, joint resolutions are included as well as bills; and in most of them,[18] other votes and orders are also included, but usually with certain exceptions. New Hampshire follows the Massachusetts provision applying to every resolve; and in Kansas and Oklahoma the veto applies to joint resolutions without exception. The most common exception is for resolutions of adjournment; in Georgia and Alabama resolutions relating to elections by the legislature are also excepted. In Louisiana, votes on questions of parliamentary procedure or on an address for removal from office are excepted. In Minnesota, Montana, Wyoming, Colorado and Rhode Island, votes on the business of the legislative

[16] Vermont, Virginia, Florida, Wisconsin, Iowa, South Dakota, Montana, Idaho, Washington, Oregon, New Mexico and Texas, two-thirds of the members present; New York, Pennsylvania, Illinois, Massachusetts, Michigan, Minnesota, Missouri, Kansas, South Carolina, Georgia, Louisiana, Mississippi, Oklahoma, Maine, New Hampshire, North Dakota, Wyoming, Colorado, Utah, Arizona, Nevada and California, two-thirds of the total membership.

[17] Arizona, California, Connecticut, Florida, Idaho, Illinois, Indiana, Iowa, Maryland, Mississippi, Nevada, New Jersey, New Mexico, New York, North Dakota, Ohio, Oregon, South Dakota, Utah, Vermont, Virginia, Washington, West Virginia and Wisconsin.

[18] Alabama, Colorado, Delaware, Georgia, Kentucky, Louisiana, Minnesota, Montana, Pennsylvania, Rhode Island, Texas and Wyoming; in Arkansas and Tennessee to resolutions and orders, but not to other votes.

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houses are excluded from the veto power. In Alabama, Delaware, Mississippi, Missouri and Rhode Island, resolutions proposing constitutional amendments are expressly excepted from the governor's action. These exceptions also exist in the state where the veto may only be applied to bills. The courts have generally held that constitutional amendments are not subject to the governor's action, even if not specifically excluded.[19]

A further important addition to the veto power, made in recent years by many states, is the authority to disapprove of items in appropriation bills. This first appeared in the constitution of the Confederate States in 1861. It was adopted by Georgia and Texas in their reconstruction constitutions of 1865; and has since been provided in the constitutions of all the new states and also in many of the older states. Altogether, thirty-six states now give the governor the power to veto items in appropriation bills.[20]

A few states have extended this principle so as to authorize the governor to veto any section of any bill. In the New York constitutional convention of 1867 a proposal to give the governor power to veto parts of bills was recommended by the committee; but it was defeated in the convention. Washington first adopted such a provision in 1889, and South Carolina followed in 1895. The constitutional amendment of 1902 establishing the veto power in Ohio also contained a similar provision; but this was limited to the items of appropriation bills by the amendments of 1912. Alabama and Virginia in their latest constitutions (1901 and 1902) authorize the governor to return bills to the legislature with suggested amendments.

[19] See Commonwealth v. Griest 196 Pa. 396 (1900); Warfield v. Vandiver, 101 Md. 78, 120. In Mississippi the veto power is granted only for bills, and the constitution also provides that: "Orders, votes and resolutions of both houses affecting the prerogatives and duties thereof, or relating to adjournment or amendments to the Constitution, to the investigation of public officers, and the like, shall not require the signature of the Governor; and such resolutions, orders and votes may empower legislative committees to administer oaths, to send for persons and papers and generally make legislative investigations effective."

[20] All but the six New England states, four central states (Indiana, Tennessee, Wisconsin and Iowa), Nevada and, of course, North Carolina. See *Equity*, January, 1917.

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Grading the states according to the apparent strength of the veto provisions in their constitutions, the first rank would be given to New York, Pennsylvania, Missouri, California and Colorado. In each of these states the governor may veto items in appropriation bills, he has ten days for the consideration of bills during the session of the legislature and thirty days at the close of the session, and a two-thirds vote of the total membership of each house is required to pass a measure over his objections.

At the other end of the list, the states where the veto provisions appear to be the most restricted are Connecticut, Indiana and Tennessee. In none of these states can the governor veto appropriation items. The time for the consideration of measures is limited to three days in Connecticut and Indiana, and to five days in Tennessee. The vote to pass measures over the governor's objections is only a majority of the members present in Connecticut, and a majority of the total membership in Indiana and Tennessee.

Several questions connected with the veto power have come before the courts for judicial construction; and the rulings in different states are not always uniform. In many cases, however, the variations in judicial decisions may be explained by differences in the language of the constitutional provisions.

One question has been whether bills which require in the first place a vote equal to or greater than that needed to repass measures over the governor's veto are subject to the governor's action. In Nebraska and Connecticut it has been held that such measures need not be submitted to the governor; but the Georgia constitution distinctly requires all such bills to be presented to the governor.[21]

What constitutes submission to the governor? In Massachusetts bills must be presented to the governor in person; but in other states it is considered sufficient if a bill is given either to the governor or to his secretary, in New Hampshire if left at the executive office.

[21] J. A. Fairlie: "The State Governor," *Michigan Law Review*, March, 1912.

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The bill presented and acted on by the governor must in all essentials be that passed by the legislature.

In a number of states it has been held that the governor may reconsider his action in a bill so long as it is still in his control.[22] So, too, the power of a legislature to recall a bill continues only so long as it remains in its custody. There is a difference of opinion as to the power of the legislature to act further on a bill sent back by the governor at its request.[23]

No comprehensive analysis has as yet been made of the use of the veto power by state governors throughout the country. But some general observations may be offered, based on definite data for a few states and recent practice in others.

In New York and Illinois, where the development of the constitutional provisions has followed similar lines, the exercise of the veto power also shows some common tendencies. Under the council of revision plan in each of these states, a considerable number of bills was disapproved; and in most cases these vetoes were effective. After the power of disapproval was given to the governor alone, little use was made of it for many years. But in New York, after 1846, vetoes became more common; and since 1870 they have been still more frequent,—notably since 1874, with the extension of time for the consideration of bills to thirty days after the adjournment of the legislature, and the grant of the power to disapprove items in appropriations.[24] A hundred or more bills were usually vetoed at each annual session of the legislature. But with the development of the governor's initiative in legislation, from the time of Governor Roosevelt (1899–1900), the number of bills disapproved somewhat decreased. In 1915, 223 bills were vetoed out of 980.

In Illinois, Governor Palmer disapproved a considerable number of bills in 1869; but many of these were passed over the veto, only a majority vote being required for this purpose.

[22] People v. Hatch, 19 Ill. 283 (1857); People v. McCullough, 210 Ill. 418 (1904). Cf. also Indiana, Kansas, Maine, Maryland and Vermont.

[23] *American Law Review*, 41: 388–89.

[24] J. A. Fairlie: "The State Governor," *Michigan Law Review*, March, 1912.

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Even after the governor's veto was strengthened by requiring a two-thirds vote to pass bills over his objection, vetoes continued to be comparatively few, except during the terms of Governors Palmer (1869–72) and Altgeld (1893–96). Nor was there any important extension of its use after the power to veto items of appropriation bills was granted in 1884. But since 1902, the power has been used to a considerable extent, though not so much as in New York, to disapprove bills on account of unconstitutionality, general policy and defective provisions, and to reduce expenses. Since 1870 only two bills have been been passed over the governor's disapproval.[25]

The governors of Pennsylvania have also made extensive use of the veto power during the last three decades; and have made a notable addition to the application of the power which has been sustained by the courts. The power to disapprove items in appropriation bills has been construed to give authority to reduce items. For a time this was done only in rare cases; and when in 1899 Governor Stone disapproved $1,000,000 of the $11,000,000 appropriated for public schools, the validity of this action was contested; but it was upheld by the supreme court of the state. In passing on the appropriation bills of 1901, Governor Stone made extensive use of this additional authority, disapproving parts of 132 different items as well as 47 items as a whole.[26] Since then this power has been frequently exercised, as well as the power to veto general legislation.

The total number of vetoes in Pennsylvania has increased from 132 by Governor Beaver, of measures passed in the sessions of 1887 and 1889, to 371 by Governor Tener, of measures passed in the sessions of 1911 and 1913. In 1915, Governor Brumbaugh vetoed 272 bills and resolutions passed by the legislature, more than 25 per cent of the measures presented to the governor. Not more than a third or a fourth of the vetoes is made during the session of the legislature. After each session a pamphlet of the governor's veto messages is published.

[25] N. H. Debel: *The Veto Power of the Governor of Illinois*, (University of Illinois Studies in the Social Sciences, Vol. VI, nos. 1 and 2.)

[26] Commonwealth v. Barnett, 48 Atl. 976, April 22, 1901; *Annals of the American Academy of Social and Political Science*, vol. 20, p. 69 (September, 1902).

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Recent governors of California, Colorado and Wyoming have also used the veto power to a large extent.[27] The governor of California fails to sign hundreds of bills,—in 1915, 225 bills were vetoed out of 996. Governor Shafroth of Colorado disapproved about 125 bills passed at one session of the legislature. Governor Carey of Wyoming vetoed more bills in two sessions of the legislature than were vetoed in the whole previous forty years of territorial and state government.

In 1915 there were a total of more than a thousand vetoes in 39 states,—about 7 per cent of the total number of bills passed.[28]

In several states, some governors have followed the Pennsylvania precedent in construing the power to veto appropriation items as including the power to reduce items. This has been done in Illinois, Idaho, Colorado, Wyoming, Maryland and Oklahoma.[29] In the Governors' Conference of 1911, Governor Hadley of Missouri questioned the legal soundness of the Pennsylvania decision upholding this practice; and stated that he had secured a similar result by agreement with the managing officers of state departments and institutions to keep expenditures within a definite maximum before he approved the appropriation.[30] The supreme courts of Oklahoma and Illinois have recently denied the power of the governor to reduce the amount of an appropriation item.[31] It is possible that the same results may be secured by the method adopted by Governor Hadley in Missouri, or in some states by the governor's control over expenditures. But several governors have advocated an explicit grant of the power to reduce items. This has been supported

[27] P. S. Reinsch: "American State Legislatures," *Proceedings of the Governors' Conference*, 1911, 1913.

[28] A. N. Holcombe: *State Government in the United States*, p. 327.

[29] *Proceedings of the Governors' Conference*, 1911, 1912; J. M. Mathews: *Principles of American State Administration*, ch. 3.

[30] *Proceedings of the Governors' Conference*, 1911, p. 62. But cf. Luykens v. Nye, 156 Cal. 498 (1909), where it was held that such an agreement was not an enforceable contract.

[31] Regents of the University of Oklahoma v. Pratt, 28 Okla. 83 (1911); Fergus v. Russell, 270 Ill. 304 (1915).

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by Governor Whitman of New York,[32] Governor Dunne of Illinois, and Governor Eberhardt of Minnesota. A constitutional amendment conferring this power was voted on in Minnesota in November, 1916, but failed to receive the required majority of the vote cast at the election.

In the Ohio constitutional convention of 1912 there was some discussion of the governor's veto power, which had been established in that state only ten years before. But no careful study seems to have been made of the practical operation of this power. It was stated that 28 bills had been disapproved at the previous session of the legislature, and that only one bill had been passed over the governor's objection. One member objected vigorously to the veto of bills after adjournment, on the ground that this gave the governor an absolute veto on four-fifths of the measures passed by the legislature. The power to disapprove sections of a bill had been used in the case of a corrupt practices act. An amendment was proposed and adopted by which the veto provisions were modified and the governor's authority somewhat curtailed. The power to veto sections of a bill was eliminated, and the vote to pass a measure over the governor's objections was reduced from two-thirds to three-fifths of the total membership of the legislature.[33]

In Iowa, 22 bills were vetoed during the territorial period and 57 bills since it was admitted as a state in 1846. The largest number of vetoes have been 8 by Governor Hempstead (1850–54), 10 by Governor Grimes (1854–57), and 7 by Governor Cummins (1902–1908). Three governors—Newbold, Gear and Garst—vetoed no bills.[34]

No definite information has been secured as to the operation of the provisions of the Washington and South Carolina constitutions authorizing the governor to disapprove any section of a bill. The fact that a similar provision in Ohio was abandoned after ten years indicates that it had not proven satis-

[32] Annual Message to the Legislature, 1916.

[33] *Debates and Proceedings*, pp. 570–571, 1201.

[34] J. A. Swisher, "The Executive Veto in Iowa," *Iowa Journal of History and Politics*, XV, 155 (1917).

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factory. But various other methods have been employed to secure changes in legislative measures to meet objections of the governor. In a few cases governors have attempted to approve bills with qualifications or conditions. In Arizona it has been judicially decided that such action approves the whole bill; while in Mississippi, the supreme court has held that a conditional approval leaves the bill as a whole not approved.[35]

At the Governors' Conference of 1911, Governor O'Neal of Alabama called attention to the working of the constitutional provision in that state, authorizing the governor to propose amendments; and stated that there had been no cases where proper amendments recommended had not been adopted. Governor McGovern of Wisconsin said the same result could be secured, and had been secured in Wisconsin, without any constitutional provision; and two years later Governor Colquitt of Texas reported that he had recommended amendments to bills. Not infrequently the veto messages of governors point out specific objections to certain parts of bills; and such bills may be repassed after amendment to meet the governor's criticism. The same result is often secured without a formal veto, when the governor lets it be known before a bill has passed the legislature that it will not be approved unless amended in certain respects.

The frequency and effectiveness of vetoes depend a good deal on the political and personal relations between the governor and the legislature. Party lines are not often of much importance. In most states the governor usually belongs to the party which controls the legislature; and in any case most legislative measures are not passed on party lines. Where the governor and legislature do not belong to the same party and party lines are drawn, the opposition to the governor is seldom large enough to override the governor's vetoes. But Michigan in 1915 had a Democratic governor and a legislature almost unanimously Republican; and of fourteen vetoes, a majority were overruled by a two-thirds vote. On the other hand, a number of gover-

[35] Porter v. Hughes, 4 Ariz. 1 (1893); State v. Holder, 76, Miss. 158 (1898); cf. dictum in Mooz v. Randolph, 77 Ala. 597 (1884); 55 Lawyers' Reports annotated, 882.

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nors have made extensive use of the veto against bills passed by legislatures of the same political party.

Increased effectiveness of the governor's veto would seem to be insured by the provisions requiring a larger vote to repass bills over his disapproval. States which have increased the vote required show a more frequent use of the veto; but the freer use has not come until some years after the requirement has been altered. At the present time there does not appear to be any strong demand to increase the vote required in states where a majority is sufficient to make a bill law after the governor's objection. Governor Baldwin of Connecticut favors a two-thirds vote; but states that the bare majority required in that state is seldom obtained. Governor Willson of Kentucky vetoed many measures, chiefly appropriations; and only two received the majority vote required to overrule his objections. He is inclined to think that the requirement of a two-thirds or three-fourths vote is very rarely necessary, and as apt to be wrong as right. Governor Beckham of the same state, now a member of the United States senate, definitely prefers the majority requirement of the Kentucky constitution to the two-thirds vote required by the Constitution of the United States.[36] Nevertheless the experience of states which have increased the required vote, as well as the provisions of the great majority of states, are in favor of requiring more than a bare majority vote to enact as law a measure disapproved by the governor.

The provisions in a number of state constitutions giving the governor a considerable period of time after the adjournment of the legislature to examine and act on bills passed at the close of the session add greatly to the number of vetoes, and increase largely the influence of the governor's disapproval, since the legislature is no longer in session to repass any of such measures. At the Governors' Conference in 1913, Governor O'Neal of Alabama spoke in favor of an extension of time to consider bills after the close of the session; and his view was supported by

[36] Personal correspondence.

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Governor Dunne of Illinois, who stated that three-fourths of the bills passed by the legislature were passed during the last ten days of the session. The objection that this gives the governor an absolute veto on the great bulk of the legislative output is not serious, in view of the few bills passed in any case over the governor's disapproval. On the other hand, if the veto power is needed at all, it is of most importance in connection with the mass of bills rushed through the legislature in the last few days of the session. It may also be noted that if the legislature wishes to retain the possibility of repassing a disapproved bill, it may do so in many states by taking a recess over the period allowed to the governor.

The main purpose of the veto power as first established in this country after the Revolution seems to have been to enable the executive to prevent action by the legislature in violation of the constitution. The committee report which formed the basis of the Massachusetts constitution of 1780 proposed to give the governor a complete negative on the acts of the legislature in order to protect the independence of the executive and the judiciary.[37] Alexander Hamilton, however, in discussing the veto power of the President, favored it also as a wholesome check on hasty and unwise legislation.[38] Both of these general purposes are definitely expressed in the constitution of Maryland, which states that the veto power is "to guard against hasty or partial legislation and enactments of the legislative department upon the coördinate executive and judicial departments."

Nevertheless the executive veto was for a long time in practice used only in emergencies; and the tendency was to consider its main object to protect constitutional rights. No bills were vetoed by Presidents John Adams, J. Q. Adams, Van Buren, Harrison, Taylor or Filmore. In his last annual message to Congress, President Polk, who had disapproved three bills, found it advisable to make a lengthy defense of his action, as the discharge of his solemn duty to stand in the breach and

[37] Journal of the Convention.
[38] *Federalist*, No. 73.

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resist measures which he deemed subsersive of the Constitution or of the vital interests of the country.[39] President Taylor, on the other hand, voiced the Whig attitude towards executive power by viewing the veto "as an extreme measure to be resorted to only in extraordinary cases."[40]

Since the civil war the strengthening of the veto provisions and the increased use of the power of disapproval indicate a decided change in the attitude both of executives and of public opinion towards the veto. President Grant, in disapproving the currency bill of 1876, did so on grounds of financial policy and obligation to party pledges.[41] President Cleveland definitely expressed the opinion that the veto power was given "for the purpose of invoking the exercise of executive judgment and inviting independent executive action."[42]

President Taft has written: "If anything has been established by actual precedents, it is that a President in signing or withholding signature must consider the wisdom of a bill as one of those responsible for its character and effect."[43]

This latter attitude has also been expressed in judicial opinions, and is thus summarized in one of the most recent law encyclopedias: "The purpose of the veto power is to require of the governor careful consideration of every bill before it becomes a law, and the exercise of his judgment as a public official as to the wisdom of the proposed legislation in the light of the public interest, and to require an indication of such judgment by express approval or by silent acquiescence after investigation or by express disapproval."[44]

In recent years many state governors have exerted a much more active influence on state legislation than is indicated by the record of bills vetoed. They have taken the lead in advocating a positive program of legislative measures; and in many cases have been successful in carrying through a large part of

[39] Richardson's *Messages and Papers of the Presidents*, IV, 646.
[40] Ibid., V, 23.
[41] Ibid., VII, 268–271.
[42] C. A. Beard: *American Government and Politics*, p. 203.
[43] *Our Chief Magistrate*, p. 16.
[44] 12 *Ruling Case Law*, vol. 39, p. 1006.

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the program. This tendency has been aided by the veto power, as well as by the increasing power of appointment; and has gone much beyond the express provisions of the constitution. Along with proposals to strengthen the veto power, it is now urged that the governor's authority to initiate financial proposals and general legislation should be definitely recognized and authorized by the state constitution.[45]

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THE DIRECT PRIMARY IN NEW YORK STATE

H. FELDMAN

Governor Hughes first made the direct primary a state-wide issue in New York. It was in no gentle terms that his speeches and annual messages arraigned the nominating system then in vogue. His message to the legislature in 1909 gave wide publicity to the flagrant evils of the primaries and added a constructive plan of reform. Apart from his suggestions for important changes in the methods of administering the primaries, his plan included a system of direct nominations which combined responsibility in the party machine and initiative in the party membership. Designations were to be made by elected party representatives meeting as a party committee for this purpose; but if their designations proved unsatisfactory to the members of the party, ample opportunity was to be afforded the latter for nominating contesting designations by petition. The final choice of the party nominee was to be decided by a direct vote of the members of the party.

Many civic organizations, such as the City Club and the Citizens Union, both of New York City, and the Legislative Voters Association, a state organization, rallied to the aid of the governor; but the party machines controlling the legislature would not yield to the pressure, and the Hinman-Greene bill, embodying the principle of direct primaries, failed of passage.

In 1910 the direct primary again became the issue of prime importance; but the bipartisan combination in the legislature again defeated the Hinman-Greene bill, and passed the Meade-Phillips bill, which preserved the convention system intact. In an effort to anticipate calamity by accepting adversity, the legislature also passed a few bills aimed to relieve some of the glaring defects of the primary. But the governor was not to be appeased by such conciliatory measures. In refusing his

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approval of the Meade-Phillips bill he sent a special message to the legislature. When, however, even the Cobb bill, a good compromise measure to which the governor had agreed, was defeated, he called an extra session. At this extra session the friends of direct primaries united on the Cobb compromise bill. Ex-President Roosevelt, upon his triumphant return from abroad, lent his influence in aid of the governor. It is said, however, that the news of the coming retirement of Governor Hughes to the United States Supreme Court encouraged the opposition. The Cobb bill was defeated.

But the direct primary had become a "leading" issue. Governor Dix, who succeeded Governor Hughes, made a show of pressing for action in this matter. The response of the legislature in 1911 is characterized by the Legislative Voters Association in the following words: "The law finally enacted as a result of Governor Dix's insistence that something be done can scarcely be recognized by the name of direct primary." The action of the legislature in 1912 may be summarized in a sentence from a report of the Citizens Union, stating that "All the legislation enacted on the subject of primaries tended to make successful contests against the party machines even more difficult than under the unfair primary law enacted last year."

There is no doubt that politicians and officials combined to make the primary law a farce in an effort to discredit it. In the 1912 primaries great confusion occurred. The peak of absurdity was reached by the election board in New York City, which decided upon using a ballot 14 feet long. A newspaper suggested in this connection that such ballots made admirable hall runners for city flats. At least 400 out of the 1699 election districts were lacking in something—ballots, tally sheets or election officials—and, as a result, no primary at all was held in quite a "substantial fraction" of the districts. Judge Duell, Mr. Roosevelt's manager, telegraphed Governor Dix at that time: "An apter method of mocking the supposed right of the voter to signify his will at a party primary could not have been devised." Even the fall primary failed to rouse enthusiasm. The *World Almanac* for 1912 reports that "The primaries in

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the city of New York held on September 18, 1912, proved to be of little interest, since in every case the organization candidates were elected."

When Governor Sulzer publicly advocated direct primary legislation in a special message to the legislature, an open breach between the governor and his party followed. The governor's bill was defeated, and the Blauvelt bill was twice vetoed by the governor. At an extra session the governor's bill was again defeated; and the legislature finally passed the Van Woert bill over the governor's veto. But under Lieutenant Governor Glynn, who succeeded to the governorship after the removal of Governor Sulzer, an epoch-making series of election laws was passed, in December, 1913, including direct primaries and a modified Massachusetts form of ballot.

The direct primary has been used in two gubernatorial elections and once in an "off year." In spite of its short existence, however, it has already encountered a strong undertow of reaction. For this reason, the direct primary law of New York state especially deserves investigation, and this article attempts to describe the working of the law within certain limits. It is essential to a proper understanding, however, that the reader know the fundamentals of the New York primary law; and accordingly, the main features of the law with the amendments to date are presented in the following paragraphs.

THE PROVISIONS OF THE LAW

The word "party" is defined as a political organization which at the last preceding gubernatorial election polled at least 10,000 votes for governor. The basis of the primary is the enrollment of voters as adherents of the various parties. Enrollment is, of course, distinct from registration: the former is a qualification for voting in the primary, while the latter is a qualification for voting in the election. In municipalities of over 5000 population, where the citizen must appear in person to register, he is given a numbered enrollment slip prepared and printed by the government at its expense, containing the names of all the

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parties; and he enrolls by putting a cross mark near the symbol of the party with which he wishes to be associated. In municipalities of less than 5000 population, where the voter need not appear for personal registration, he is given his enrollment slip on election day. At a subsequent time these enrollment slips are assembled and the names of the enrolled voters of each party published. Provisions are also made for corrections. The whole procedure so far is, therefore, one designed merely to obtain an authentic list of persons "duly enrolled" in the various parties, and thereby qualified to participate in the primaries of these parties.

Two kinds of primaries are recognized. One is the official primary, which is defined as "any primary election held by the party and conducted by the public officers charged by law with the duty of conducting general elections." An unofficial primary is any other primary held by the party; though it is not conducted by government officials, it is not unregulated. There are two kinds of official primaries: the spring primary held in April in presidential years only, and the fall primary held annually on the seventh Tuesday before the general election. In this article the term "primary" signifies only the official primaries.

When the voter attends the primary, he is given a ballot containing the names of the candidates for nomination to office in the party with which he is enrolled. An additional device for distinguishing between the ballots of the various parties is contained in the legal provision that each party's ballot must be of a color different from the others. The voter is not bound strictly to a choice between those names which are on the primary ballot, however, for blank spaces are afforded him so that he may vote for any qualified person whose name is not on the ballot.

In New York City the time of the primaries is from 3 p.m. to 9 p.m.; but in all other places in the state it is from 7 a.m. to 9 p.m. All of the safeguards of the election process, including some of the best features of the Australian ballot, have been extended to apply to the primaries. The election officials, the

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stipend paid, and the manner in which all expenses are met by the public are the same as for the general election. Official notice of the primaries must be given by the primary officials of each election unit not less than thirty days before the primaries, such notice consisting merely in paid advertising in at least one newspaper representing the creed of each of the two parties which polled the most votes at the preceding election. No other publicity features of importance are connected with this law.

There are only three legal ways in which a person may become a candidate for nomination at the primaries: first, by a petition circulated for the purpose of having his name placed on the ballot; second, by being asked to fill a vacancy due to the death, disqualification or resignation of a person for whose nomination a petition has been circulated; third, by announcing himself as a candidate without a petition. In the third case his name will not appear on the ballot of his party, and those who support him will have to write it in the blank space provided. Needless to say, such a man is at a great disadvantage.

Designation by petition is regulated in all its details. Each signature must be authenticated by a qualified witness or by the appearance of the signer before a public officer for oath. The signer must be an enrolled voter of the candidate's party and must be a resident of the unit of representation of that office. A minimum of 3 per cent of such enrolled voter's party residing within the political subdivision embraced by the office is required. To prevent too great hardship, however, a number of maxima are set, as, for example, for United States senator, 3000, and for any New York City office, 1500 signatures.

An important section relative to the use of money reads as follows: "Party funds are not to be expended for primary purposes. No contributions of money, or the equivalent thereof, made, directly or indirectly, to any party, or to any party committee or member thereof, or to any person representing or acting on behalf of a party, or any moneys now in the treasury of any party, or party committee, shall be expended in aid of the designation or nomination of any person to be voted for at

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a primary election, either as a candidate for nomination for public office, or for any party position."

It must be noted in this connection that this clause does not forbid the holding of a convention by a party for the purpose of deciding (unofficially of course) upon either party nominees or a platform, for an earlier provision reads: "Nothing contained in this chapter shall prevent a party from holding party conventions, to be constituted in such manner, and to have such powers in relation to formulating party platforms and policies and the transaction of business relating to party affairs, as the rules and regulations of the party may provide, not inconsistent with the provisions of this chapter. Delegates to any such convention and members of party committees, other than members of state and county committees, shall not be chosen at official primaries or otherwise at public expense."

Although a convention may decide on a "ticket," yet the names of its nominees will not be put on the ballot until a duly signed petition of nomination has been filed in the regular way, nor will any mark or symbol of identification be permitted on the ballot. "Conferences," constituted in the same manner as the former conventions, have been held by the various parties every year since the direct primary act was passed; and in one instance a Progressive party conference practically decided on a "ticket." Although repeated attempts have been made at the Democratic and Republican party conferences to have candidates endorsed, this has not been done. It has been thought best to avoid using a party conference for nominating state officers, for fear, probably, that its nominees might receive the stigma of "machine men;" but in local contests the nominees decided on by county and other local committees, have had behind them all the organized political strength that the leaders could muster. As will be seen later, the above provisions have impeded but not eliminated the support of candidates by party organizations.

THE OPERATION OF THE PRIMARY

Has the new system increased participation in the primaries by the citizenry at large? The only answer to such a question is

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to be found in the facts. Statistics of enrollment for the state as a whole are not available because they are distributed over sixty-two county boards which do not have to report on this matter to any central state authority. Moreover, many of the county boards of elections do not keep records beyond the short period which their local regulations specify, and some seem to have no records at all. For these reasons it has not been found possible to present complete statistics; but the aggregate population of the counties whose records are cited here is so large a majority of the total population of the state as to make the rest of the counties unimportant. New York City, embracing five counties, and containing a population greater than that of the rest of the state, is given more attention than the others. With the exception of this city, the statistics are restricted to the two major parties because the other parties have been either too small or too irregular to exhibit definite characteristics.

Table showing the number of enrolled voters, and the number and percentage who participated in the fall primaries

NEW YORK CITY

YEAR	REPUBLICAN PARTY		DEMOCRATIC PARTY		SOCIALIST PARTY		TOTAL VOTE CAST AT REGULAR ELECTIONS
1910	26%	51,800 / 194,000	36%	123,920 / 341,670	14%	1,040 / 7,700	574,070
1911	23%	43,000 / 190,000	38%	122,250 / 324,400	14%	1,340 / 9,780	
1912	18%	33,500 / 188,550	27%	94,000 / 343,500	12%	1,608 / 13,600	661,188
1913	20%	36,340 / 180,180	29%	104,200 / 364,100	15%	2,510 / 16,895	629,600
			After passage of the direct primary law				
1914	45%	70,080 / 157,070	43%	150,510 / 349,590	18%	2,885 / 15,920	599,675
1915	36%	65,060 / 181,780	41%	150,500 / 365,250	18%	2,945 / 16,035	620,000*
1916	37%	74,401 / 199,325	27%	98,638 / 364,797	16%	2,710 / 16,716	714,660*

* Approximate.

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A summary of the statistics of other counties is shown in the following table, which exhibits a contrast between the years 1912 and 1916 in the amount of participation in the primaries:

NAME OF COUNTY	REPUBLICAN PARTY				DEMOCRATIC PARTY			
	1912		1916		1912		1916	
	Number of enrolled voters	Number of enrolled voters who participated in primaries	Number of enrolled voters	Number of enrolled voters who participated in primaries	Number of enrolled voters	Number of enrolled voters who participated in primaries	Number of enrolled voters	Number of enrolled voters who participated in primaries
Albany	19,360	5,018	27,692	18,086	14,462	7,052	11,688	3,779
Cattaraugus	4,756	1,135	8,569	2,600	2,412	474	4,409	907
Chatauqua	8,160	3,995	14,094	6,136	2,341	647	3,733	750
Fulton	5,213	690	6,139	4,182	2,071	293	2,336	649
Jefferson	7,500*	778	10,435	5,008	4,800*	515	4,297	1,007
Livingston	4,393	454	5,671	2,697	2,860	296	2,947	596
Nassau	5,019	1,662	11,596	4,988	3,844	2,753	7,265	2,683
Orange	9,900*	1,430	14,677	4,410	7,090*	721	8,606	1,449
Oswego	7,919	796	9,170	2,896	3,557	1,245	5,745	1,010
St. Lawrence	3,900	975*	13,120	9,500*	560	140	5,076	3,550
Schoharie	2,121	331	2,454	1,258	2,638	378	2,965	1,084
Seneca	2,098	625	3,507	2,342	1,684	447	2,342	641
Total	80,339	17,889	127,124	64,103	48,319	14,961	61,409	18,105
Percentage	22%		50%		31%		29%	

* Approximate.

A study of the detailed figures of the last few years shows conclusively that at its introduction in 1914 the direct primary was accompanied by a great increase in the amount of participation by the people, as, for example, in New York City. A second fact is that although this increase has been sustained in the Republican Party, there has been a considerable decrease in the Democratic Party, resulting in a percentage which is actually lower than that before the direct primary was introduced. It is too early to make deductions, but it is a subject worthy of speculation as to the probable future of the primary from this point of view. Every new broom sweeps clean. Whether the people will get tired of bothering with elections, whether it will

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always be necessary to "get out the vote" by partisan exertion, and whether there is any virtue in holding a primary in which party workers and club members chiefly find interest are questions which will be asked more and more as the novelty of having nominations "by the people" wears off.

The percentage of voters participating in the primaries must be accorded its proper significance, in spite of the difficulty of judging the effectiveness of government by numerical records. The smaller the number of voters participating, the greater the power of the "inner circle." The larger the number, the smaller becomes the percentage of political cogs and machine men and the more formidable becomes the influence of party sentiment. In the latter case the machine must put forth a candidate who can get greater support from the people as a whole, and this is apt to produce better candidates.

Moreover, the importance of participation can be seen by comparing the primary vote to that of the general elections and the total population. Thus, for example, New York City statistics for 1916 may be quoted:

Total population	5,602,841
Total number of votes cast in municipal elections (in round numbers) about	715,000
Total number of enrolled voters, all parties	612,812
Total number of enrolled Democrats	364,797
Total number of enrolled Republicans	199,325
Number participating in Democratic primaries	98,638
Number participating in Republican primaries	74,401
Numbers necessary for the machines to control nominations in the Democratic party	49,320
in the Republican party	37,201
Numbers necessary for the machines to control nominations in case of a three-cornered fight in the Democratic party	33,000
in the Republican party	25,000

It is evident that under the present system of direct primaries a machine only needs harmony to win. It is apparent, even from a cursory glance at the membership list of the numerous political clubs that the political powers can easily nominate their candidate, although their actual following may be a small

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percentage of the actual party membership or of the population at large.

The table on the next page presents the statistics of the state-wide primary vote for state offices in 1914 and 1916.

It will be seen that the direct primary of 1914 for state offices seemed to justify the hopes of many of its adherents. Practically every office was contested, and in some cases the totals were very close. But it may be said that the 1914 figures have much more meaning to those familiar with the inside politics of the state. What is declared to be an awakening of popular interest is often in practice only the result of a clash among party bosses. Factional fights of politicians are probably more often the cause of the grouping of votes than the opinions of the voters.

The returns for 1916 for state offices seem to indicate a sweeping victory for the organization. In the great majority of cases, candidates for nomination ran unopposed, and two of the four contests were decided by overwhelming majorities. It was the contest for the United States senate alone which showed the primary to advantage, and many people regarded the vote for Bacon as an indication of popular power. The following, from a newspaper editorial, doubtless reflects the current opinion on the recent operation of the primary:

"If one thing stands on the face of the returns, it is that the bosses are among the quick, and not among the dead. Those who looked on the direct primary as a sort of Excalibur which should rise from the waters, mystic, wonderful, and slay bossism,—but who courted inevitable disappointment by anticipating such a miracle? Only the dreamers and the mechanists. The rest knew better. They knew that the roots of boss power lay far too deep for destruction by any surface treatment; and yet many of them gave their hearty support to the direct primary move."[1]

Among the main provisions which Governor Hughes advocated in the Hinman-Greene bill was one to the effect that the

[1] New York *Evening Post*, September 22, 1916.

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Statistics of the primary vote in the two major parties of New York state, for state officers, 1914 and 1916

OFFICE	1914		1916	
	Republican	Democratic	Republican	Democratic
Governor	Whitman 120,073 Hinman 61,952 Hedges 43,012	Glynn 175,772 Hennessy 68,387	Whitman 254,177 Bennett 44,720	No contest
Lieutenant-Governor	Schoeneck 78,536 Sidway 57,348 Heacock 68,303	Lockwood 158,159 Rice 57,305	No contest	No contest
Secretary of State	Hugo 71,037 Cunningham 67,050 Porter 58,845	May 167,198 Newborg 43,251	No contest	No contest
Comptroller	Travis 88,765 Hooker 62,414 Strassburger 48,519	Sohmer 158,309 Davidson 53,077	Travis 216,878 Hooker 53,710	No contest
Treasurer	No contest	Carp 147,443 Saunderlin 55,055	No contest	No contest
Attorney-general	Woodbury 124,009 O'Malley 72,467	Parsons 151,122 Larkin 57,096	No contest	No contest
State Engineer	Williams 159,243 O'Brien 36,892	Bensel 146,533 Bennett 58,485	No contest	No contest
United States Senator	Wadsworth 89,960 Calder 82,895 Hill 37,102	Gerard 133,815 Roosevelt 63,879 McDonogh 17,862	Calder 153,373 Bacon 144,366	McCombs 99,307 Conway 52,756
Chief Justice of the Court of Appeals	None to be elected	None to be elected	No contest	No contest
Associated Justice of the Court of Appeals	No contest	Seabury 139,694 Carlisle 65,820	No contest	No contest

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party committees should be chosen by party vote. These should then suggest or "designate" the party candidates; and if these designees were unsatisfactory, other candidates could be presented by petition. The purpose of this was to put the party on record, and from a theoretical point of view much can be said in its favor. Commenting on this, the editorial quoted above continues as follows:

"Technically, the contest last Tuesday afforded no test of the direct primary from this point of view, because the machine had no official candidate. This was precisely the genius of the direct primary bill for which Governor Hughes made his fight, though the point was not generally appreciated at the time; and he regarded it as vital, also, that the party committees, and through them the bosses, should come up for reëlection at the same time as, and on the same primary ballot with, the candidates whom they recommended. The absence of any provision for regular party action in the naming of candidates is a defect in the present law which the legislature should remedy. But practically speaking, the test was there. Mr. Calder had the moral backing of the state organization, and of most of the local machines outside of Albany County. It was assumed everywhere, even among those who had faith in the direct primary, that Bacon faced an impossible task. He had lined up against him the bulk of the politicians, the anti-militarists and the hyphens, and yet he polled 48 per cent of the total vote cast. Those who ask further evidence of the increasing reserve power of the people under the new dispensation need only observe the results in Westchester, where the machine's candidate for district attorney went down to defeat, or in Schenectady, where a Socialist mayor carried the Democratic primary for Congress."

How a party organization exercises its power may be illustrated by quotations from letters of candidates.[2]

[2] These opinions on the direct primary were secured, in part, by Harold P. Stokes, Albany correspondent of the New York *Evening Post*, who aided the writer by supplying him with valuable material on this subject.

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A successful candidate who had the backing of his party organization writes: "I was designated by the organization county committee. My main issue was the necessity of united effort to procure results, in this case exemplified by the regular party organization, and I asked support as such. The organization, to my mind, represents a definite entity from which results may be demanded and service asked and where responsibility may be fixed. An independent is responsible only to himself. I received the active support of the local organization and I was nominated."

The nature of this "active support" may be gauged from the following from a letter of a successful candidate for nomination who was opposed by the organization of the party in which he ran for district attorney of Kings County, New York City. "The local organization worked hard for my opponent's nomination. Although I had spoken for twenty years in every campaign for the candidates of the Democratic party, I was denied the right to speak in any Democratic club house in my own behalf. As a result, all my speeches but one were made from an automobile in the open air on the street corners."

A letter from an unsuccessful candidate for nomination for Congress indicates another source of power for the regulars and shows how subtly it may be exercised: "Out of the total enrolled Democratic vote in the County of Richmond, over 7000 did not vote. I am assured and believe that the great majority of the Democrats that did not attend the primary would have voted for me if they had voted at all. The enrollment in Richmond is considerably in excess of the enrollment in the New York end of the district and the Richmond vote was ample to select the candidates if the people had taken enough interest and trouble in the contest to attend the primary. My unsuccess was due not to the lack of voters favoring my nomination, but lack of organization to notify them of the primary and get them to the polls. Some of the districts are three miles long and the voters probably did not have the time or the means of getting to the polls after reaching their homes without considerable effort and some expense. I had no organization backing while

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the organization, of course, had its regular forces in every district."

Instance after instance could be cited showing that the political machines were again running smoothly and that the plagues visited on the "independent" candidate are many.[3]

Returns from the local primaries in 1916 for members of the state legislature and for Congress are conclusive in their indications. In the reports of primaries in 60 assembly districts, contained in the five counties of New York City, with 120 opportunities for contests in the two major parties alone, only 12 nominations were contested, and the remaining 108 candidates for state assemblymen ran without any opposition whatever. Of 23 state senate returns examined, with 46 opportunities for contests in the two major parties, only 2 candidates were opposed. In 23 congressional districts, with 46 opportunities for contests, only 10 candidates for nomination had any opposition.

The board of elections of Albany County reports, "There is one state senator and three assemblymen in Albany County. There was no opposition in any party for the nominations in 1916." In the counties of Cattaraugus, Chenango, Delaware, Jefferson, Livingston, Monroe, Nassau, Oneida, Ontario, Orange, Oswego, Schuyler, Seneca, Sullivan, Wayne and Westchester, in which there are 25 assembly districts and approximately 11 state senate districts, with a total of 72 opportunities for contests in the major parties, not a single candidate had opposition in the primaries for these offices. The state senate only was contested in Fulton, Saratoga and Schoharie Counties; and out of 8 chances for opposing designations in Onondaga County,

[3] As illustrative of one of the curiosities of the direct primary system, the following quotation from a letter from ex-Congressman William S. Bennett is of interest: "In 1915 at the special election a man by the name of Webster, who has never really been a New Yorker, ran in the Republican, Progressive and Independence League primaries against mé and got a considerable vote. He had run the preceding year for congressman-at-large in Illinois and ran in the preferential primary for president in Minnesota and for vice-president in Oregon. He had no opposition in Oregon and therefore secured the endorsement of the Republicans there."

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one candidate found a rival in the primaries. In the counties of Cayuga, Chautauqua, Erie, Rensselaer and St. Lawrence there was a higher average, as there were 13 contests, out of about 50 possible, in the 19 assembly and 6 state senate districts.

These counties are not selected ones. They are those which responded intelligibly to a questionnaire sent to all the counties. Their aggregate population is, however, so large a majority of the total population as to make the returns from the other counties unnecessary. As machines and political organizations invariably have candidates, we may take it as a correct deduction that all uncontested candidates in these counties were either chosen by or were pleasing to the "organization."

It is regrettable that no basis of comparison exists between present conditions and those under the convention system, for under the latter there was no way of knowing how many candidates for nomination there were. Certainly there could not have been fewer. In many places opportunities for service, distinction and comfortable living did not receive even a "second bid" on primary day. Is it too much to deduce from these facts that the direct primary has not as yet encouraged opposition?

EXPENSE OF THE PRIMARY

However, there are many reasons why a man may not wish to become a candidate. The following quotation from a letter by a well-known member of the New York State Assembly gives the point of view of the candidate in homely terms and indicates another disadvantage of the anti-machine man:

"The direct primary system has given the knock-out blow to the poor man. It has duplicated the election process. It would not be nearly as bad if public offices were long in tenure and liberal in remuneration, but take my job, as an example. As assemblyman, my term is only one year, and my salary only $1500. It costs me money to get the nomination—straight money, I mean, for the state does not give us any publicity, as in other states, and it costs me much more for election. I get elected. But I have hardly warmed my seat before another

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primary starts and then another election. Again I have to dig down, and my salary, small enough as it is, dwindles down to a negligible sum. To a man who wants to stay in politics, this is an endless process.

"This kind of thing takes the fun out of the work. It drains your desire for service because you have got to do too much campaigning and grand-stand play. It takes away your independence and increases the temptation to join the insiders—for the smile of the boss who can deliver the nomination to you cut and dried without trouble assumes an ineffable halo.

"In your letter you quoted some primary expense accounts filed by candidates. I don't doubt you copied them correctly, but pardon me if I call these figures bunk. Everybody knows that the law is a dead letter, and that not one candidate out of ten fills out his expense accounts correctly."

In an effort to get at the facts, the writer examined the reports filed by the candidates of New York City for the 1916 election, and it was these figures of which the assemblyman made light. In an amazing number of cases the candidates entirely ignored the stern-looking corrupt practices law and had filed no account of their primary campaign expenses; and there does not seem to have been any effort whatever by the officials to secure compliance with the law. In other cases the amounts reported as spent were so much at variance with common opinion on this point that the figures seem valueless. Still it may be of interest to present a summary. Fifty candidates for the assembly reported that they had no expense—eight Republicans, four Democrats, one Progressive, twenty-seven Socialists, one Independence Leaguer and nine who sought nomination in more than one party. Of the candidates for state senator, twelve reported in like fashion, as did also twenty-one candidates for Congress in the various parties. Of those whose reports did show expenses, nine candidates for Congress spent $30 or less, three from $30 to $100, three between $100 and $200, four between $200 and $300, five between $300 and $400, one over $500, and one spent $1519, of which $1137 came as contributions. Eight candidates for the state senate reported having spent less

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than $40, one $60, two some $250 odd, and one candidate $517. Fourteen candidates for assemblymen reported having spent less than $30, six between $30 and $65, one $145, two between $200 and $300, two between $300 and $400, one over $500, and one over $600.[4] As an indication of the expenses of other candidates may be quoted that of $3000 reported by a contestant for district attorney of Kings County (Borough of Brooklyn, New York City), and $1200 by an aspirant for the supreme court from a judicial district including Kings County.

In rural districts the candidates frequently reported high expenditures. One candidate claimed that his opponent for the nomination for state senator had probably spent over $10,000. The unsuccessful candidate for the nomination for Congress in the Republican party of one rural district regrets the expenditure of $3000, and a candidate for state senator in the same party claims an expenditure of $1395.

The striking features of the primary campaign expenses appear in the more important state offices. This is shown for 1914 and 1916 in the following table. A few main offices have been selected, and only the expense accounts of those candidates in the major parties who had opposition are noted.

It must be borne in mind that these are personal expense accounts. They show that primaries are not for the man without means. In addition, much money was spent by political committees. Governor Whitman's nomination presents an excellent example. On paper it looks very neat—naught spent. As a matter of fact, a White Book, reviewing his accomplishments, was issued early in the fall before the primaries. This was used as a campaign document with which to impress all the voters and especially the Progressive Party whose endorse-

[4] The following report of the main items of expense of the congressman who spent $1519 in a vain effort to get the nomination is characteristic of the type:

At post office	$448.44	Auto service	$ 88.50
Rent of offices	212.50	Political workers	163.00
Furnishing offices	160.00	Office service	2.50
Telephone charges	51.01	Canvas books	3.30
Publishing company for printing	238.75	Map mounting	5.00
Addressing agency	125.37		

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ment Whitman finally received. It was sent broadcast to about a million people, and the postage alone is said to have cost $25,000. Mr. George W. Perkins spent $45,542 on Whitman's

Personal expenses of primary campaigns in the two major parties 1914 and 1916

YEAR	REPUBLICAN PARTY		DEMOCRATIC PARTY	
	Governor			
1914	Whitman	$	Glynn	$ 618.00
	Hinman	4,150.00	Hennessy	1,112.10
	Hedges	3,683.85		
1916	Whitman			
	Bennett	2,215.95		
	Senator			
1914	Wadsworth	$10,038.35	Gerard	$8,000.00
	Calder	16,619.69	Roosevelt	2,005.45
	Hill	No report made	McDonogh	623.05
1916	Calder	3,748.71	McCombs	874,49
	Bacon	9,611.14	Conway	7,228.44
	Secretary of state			
1914	Hugo	$ 352.58	May	$
	Cunningham	187.15	Newborg	391.00
	Porter	700.97		
	Comptroller			
1914	Travis	$ 1,219.82	Sohmer	$ 70.00
	Hooker	2,201.03	Davidson	110.00
	Strassburger	387.60		
1916	Travis	500.00		
	Hooker	1,106.81		
	Treasurer			
1914			Carp	No report made
			Saunderlin	No report made
	Attorney-general			
1914	Woodbury	$ 684.68	Parsons	$ 45.50
	O'Malley	1,785.11	Larkin	525.00

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election. And Mr. Perkins was only one contributor, and Mr. Whitman was only one candidate. One legislator characterizes the primary campaign as a "scramble between those whose friends can put up most money," with the richest in the lead.

In December the New York *Evening Post* began a series of articles on the 1916 election. The writer of these articles, who had been about the state investigating conditions, charged that in one small county alone (Herkimer) the purchasable vote on primary day was conservatively estimated by politicians as 2500; that one political party spent $25,000 in the Saratoga County primary in direct violation of the law; that fifteen or more county boards, not to say innumerable candidates, had failed to file expense accounts; and that "The New York Corrupt Practices Act is a work of art as far as it goes—but its enforcement is quite another matter." It is not charged, however, that actual violence or ballot stuffing occurred. Except for an occasional instance of favoritism, the New York law is now being properly administered by the poll clerks on primary day.

One of the hardships that works most severely on the independent candidate is the filing of petitions. One may know a good many men in a district, but where two or three hundred signatures are needed, all of these by duly enrolled voters of one party, it provides business for the professional hawker. Expenditures of from $50 to $200 for this purpose are not unusual. One candidate for Congress reported an expenditure of $79 for notarial services alone, as these are necessary to authenticate the signatures. Occasionally a charge of fraud is heard, claims being made that names are forged or copied from the graveyard; but such an evil must be regarded as slight and easily remediable by efficient administration of the law. What has added to the difficulty is the tendency of candidates from the major parties to invade the minor parties, except the Socialist. One candidate for Congress spent $75, $213, and $346 in the respective primaries of the Independence League, the Republican and the Progressive parties. One candidate presented himself for nomination in five parties and received five endorsements.

Usually, though, the petitions of the minor parties are a farce

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and their nominees a joke. Under the provisions of the law requiring 3 per cent of the enrolled voters of a subdivision to nominate a candidate for that subdivision, any member of the "American" party who had one friend in this organization could have had his name on the primary ballot. There is no minimum. Mr. Whitman became the official candidate for governor of the American party because he had 38 votes on primary day, while Mr. Seabury had one less—this for a state office. In this same party there was for some time a doubt as to the candidate for senator because the nomination hinged for a few days on one up-state vote which might have "turned the tide." In the eleventh congressional district, a total primary vote of two made one Socialist the official candidate for Congress.

All this costs money. It raises tax rates. No figures as to the cost of direct primaries to the state as a whole are obtainable, because the 62 counties do not report to any state authority, and many county boards do not themselves know what the primaries cost. A number of counties which reported their expenses differed so widely in the items included as to make the data of little value. Fortunately, however, the New York City board of elections, in its annual report for 1916, gives some valuable facts as to expenses:

"In 1902 the primary election cost $94,150, while in 1916 the primaries (spring and fall) cost $448,325. The ballots at primaries . . . . alone add nearly $100,000 to the cost of a primary election. . . . . Designations of candidates to be placed upon the primary ballot in the fall were made by petitions bearing 147,025 signatures. . . . . Nearly 2,000,000 ballots were printed for 2,079 election districts, and these, together with 6,000 election booths, 16,000 ballot boxes, and about 50 tons of stationery, were delivered to the polling places; 16,632 election officers were employed. The cost of the fall primaries of 1916 was $215,325.

"The best opinion from unofficial sources, although very general in its terms, may be worth taking into account, viz.; that the cost of elections up-state aggregate about twice as much as the cost in this city."

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THE MOVEMENT FOR ABOLITION OF THE DIRECT PRIMARY

These are some of the factors which have aroused a strong antipathy against the direct primary in many quarters. This feeling may be well illustrated by a statement made by Senator Brown, majority leader of the state senate: "The direct primary law is an abomination and it ought to be skinned alive. If the governor had not objected, we would have repealed it and brought back the convention system at the last session, and we would do it now if we thought the governor would sign the bill."[5]

In September 1916, at a state conference of Republicans, concerted efforts were made to place the party on record as favoring a return to the convention plan of nominating state officers. But, "The Whitman faction finally won and the primary law was left unmolested in the platform declaration. It pointed out that the proposed change would be regarded by Progressives as reactionary."[6]

As soon as Governor Whitman was reëlected, however, opposition to the direct primary bill became active. In December, it was announced that: "A committee of fifteen will be appointed by the Republican Club to confer with and enlist civic bodies and Democratic and Republican organizations throughout the state in a campaign to obtain the repeal of the direct primaries law by the next legislature."[7]

In January it was reported that: "The plan of returning to the convention system has gained such foothold among the legislators that already there is discussion of the probability of passing such a measure over the executive's veto."[8]

The activity of the opponents to the present law was now directed definitely to securing the modification of the primary law to conform to the mixed system of primary and convention, formerly advocated by Governor Hughes. When State Senator John Godfrey Saxe presented a plan of this sort, it was endorsed

[5] New York *Times*, January 19, 1916.
[6] New York *Times*, September 28 and 29, 1916.
[7] New York *Tribune*, December 19, 1916.
[8] Ibid., January 14, 1917.

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by leaders in both parties. By February, six measures were slated for positive passage, prominent among these being a modification in the primary law.

But Governor Whitman proved so firmly opposed to any changes in the primary law that the issue was temporarily dropped. It must be borne in mind that in New York the governor has the power of vetoing separate items in the annual budget and that for this reason alone, as well as for others to be discussed below, the executive can wield great power over the "pork" appropriations, so necessary for the rural legislators. The governor is strongest in the lower house, but has much opposition in the senate.

Near the end of the session, the old skeleton was disinterred; and on May 2 by a vote of 30 to 17, which zigzagged across party lines, the senate passed a bill for a return to the convention as a vehicle for the nomination of candidates for state offices and for judgeships voted for in units larger than a county.

After the senate action the governor told friends that he would veto the bill if it came to him for approval. It was said that 37 votes were prepared to line up for the bill in the senate, three more than the necessary two-thirds required to overrule the governor's veto.

The bill was not voted on in the lower house and the legislative session of 1917 closed without the abolition of the present system of nomination. A few unimportant amendments in the details of election administration were passed.

Excellent reforms have been proposed by the City Club, the Citizens Union and the Honest Ballot Association. The annual report of the New York City Board of Elections presents a number of constructive suggestions, which, the report claims, would result in the saving of large sums in primary elections. In addition to these suggestions, many good bills introduced by members of the legislature during the last three years have been left to a passive death in committee, or have found other obstacles by veto or failure of passage. Among the objects of these bills were the closer regulation of campaign expenditures, with a maximum for the various offices; the publication at govern-

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mental expense of a campaign pamphlet in aid of primary and general election candidates; a reduction in the number of signatures for designations for the primary, aimed to relieve the hardships of the present minimum required in populous districts; a requirement that a political party must poll at least 25,000 votes for governor to entitle it to recognition as a party and to participation in the official primaries; and other changes.[9]

Some of the reasons for opposition to any change in the primary law are not hard to perceive. On the one hand, the faults of the direct primary are not sensational in nature. The general citizenry shows no sentiment for a change. Moreover the alternative presented of having party conventions does not capture popular imagination. On the other hand, the abolition of the direct primary is potentially full of great danger,—especially to those with further political ambitions. A great many persons at odds with the local machine will find the subject a good target. The abolition of this exclusive legal power possessed by the people of nominating candidates for party office will be considered as an attack on democracy and as a "rehabili-

[9] A very interesting direct primary bill was that sponsored by former State Senator J. Godfrey Saxe. His letter to the chairman of the senate judiciary committee reads in part as follows:

"My plan, briefly, is, first, to restore the Hughes' system which, you will recollect, consisted of two elements: (1) Designations by the certificates of small party committees elected the year before, i.e., an organization or machine designation, whereby the leaders lay their cards on the table; (2) A period of opportunity of, say, fifteen days, within which other party members who dissent from any designation made by the machine may file a contesting designation, by petition.

"To this, I add my own new feature: Whenever and wherever no contesting designation is filed, the committee's designation shall become, ipso facto, the party nominee for that office without a primary election.

"Individuals join parties because they are in sympathy with them, and nine out of ten, if not ninety-nine out of one hundred designations are not contested today and the primary election is a farce. My plan recognizes that party leaders are usually going to make the nomination anyway; and after providing for the fullest opportunity to the individual party member to make an intelligent contest, it then provides that where there is no such contest, the primary election shall be dispensed with altogether. Why have an 'election' with only one candidate? I earnestly contend that this plan would result in an enormous reduction of trouble and expense and that it presents no serious difficulty."

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tation of the Black Horse Cavalry," and it might be used effectively against the party which undertakes it, or against the governor who permits it. Another reason, advanced in a letter from an opponent of the direct primary, is of significance:

"The present direct primary law will have almost the unanimous support of the press, for it has provided such a vast amount of extra and useless printing that every little two-column weekly throughout the state, to say nothing of the large dailies, will strenuously object to losing their share of the pap, and all of the old theoretical and far-fetched arguments in favor of the monstrosity will be resurrected and printed broadcast in aid of it."

It will certainly not help in impressing the west, where the direct primary is still supposed to be in favor; and it will not stamp a man as a progressive to have the repeal of a democratic measure on his record.

These are, however, the least important factors. The main reason is that Governor Whitman has for a long time been at odds with party leaders and he fears opposition of the kind that can be mustered at a party convention. He is strong with the people and hated by many machine men. He can easily win another nomination by direct primaries, but will have a less quiet night under a convention system. As a consequence he is unwilling to allow the present system to be changed.

These arguments do not, however, defend New York's direct primary law. That it has not proved a success is a general opinion among those who understand it. The question to be answered, therefore, is why it has worked so poorly. And the answer to this, apart from more general considerations as to the propriety of having primaries at all, is not a difficult matter.

One reason is that the governmental organization of New York State was not ripe for any such measure of popular control. The passage of the direct primary law in 1913 was equivalent to the proverbial process of putting the cart before the horse. As a result, the law has become so entangled with a complicated set of governmental defects that it is hard to see how, under the circumstances, any such measure could be what its enthusiasts hope. As long as the attention of the people is distributed by a

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long ballot over a host of unimportant, nonpolitical offices, primaries are bound to involve decisions which the majority of citizens are incapable of making. As long as elections come frequently, and at set periods that are not at all correlated with important issues or political crises, the manifestation of little interest in the process of nominating candidates is bound to be the usual thing. So long as assemblymen are elected for a term of only one year and are given a stipend of $1500 annually, the direct primary will be another stumbling block and a deterrent to possible candidates for nomination. It is only after such defects have been remedied that some form of direct primaries will, perhaps, be made to operate successfully.

Apart from these general considerations concerning the condition of New York's government, the form of the direct primary bill itself was ill-adapted to its effective operation. It provided no privileges to the candidates, such as free publicity, which would have relieved some of the hardships of the primary campaign. By forbidding designations of candidates by party organizations, it relieved the latter of all responsibility for poor nominations although it stripped them of little real power. It has thus become doubly difficult to distinguish the "independent" from the "regular." Perhaps, too, the corrupt practices act could have been more tightly drawn so that so many of its provisions would not have become dead letters.

If at some future date the New York direct primary law is amended, it will probably be of the mixed type advocated by Governor Hughes. As such, the direct primary will become merely an emergency measure,—a weapon for popular defense against a very corrupt machine. It will be used mainly in those cases where popular sentiment is strong against a party group or candidate, or when the bosses wrangle among themselves. Occasionally, of course, some man will put up an independent fight. But in the main it will be a latent power to be exercised only in protest.

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LEGISLATIVE NOTES AND REVIEWS

EDITED BY JOHN A. LAPP

Director Indiana Bureau of Legislative Information

Constitutional Conventions[1]

Written constitutions are an American institution, based upon the following four ideas: to wit, that charters of government should be in writing, that there exist certain inherent rights which should be asserted in these charters, that these charters should be superior to mere statutes, and that these charters are contracts between each citizen and the whole state.

The convention, as a distinct body for the framing or alteration of constitutions, was invented in Massachusetts during the Revolution. Since then there have gradually developed two leading methods of changing constitutions: by the regular legislature (now possible in every state except New Hampshire), or by a convention (now possible in every state except Rhode Island); in either case a submission of the proposed changes to the people is almost always required. In twelve states amendment is now possible by direct popular initiative, without the interposition of either the legislature or a convention.

Government in America is based upon the theory of popular sovereignty; the people govern through representatives, merely as a matter of convenience. The term "the people" means the people as organized into the state, rather than as a collection of individuals. All persons, men and women, infants and adults, comprise "the people." Yet the term in a political sense means the people speaking through the voters.

The people can speak only through their authorized representatives, the legal voters. These, in turn, can represent the people only at an election duly called and held. It is only at such an election that the minority can be bound by the action of the majority, and the non-voters be bound by the action of those who vote. When a part of the

[1] An abstract of a book by the same name published by Little, Brown and Company.

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people or even a majority of them acts outside the forms of law, they have no right to bind the rest.

The people have the right to change their form of government at will, using whatever method suits them. This is a fundamental right, asserted by the Declaration of Independence and by most constitutions.

The people may exercise this right in any one of three ways: by some authorized procedure; by an extraconstitutional but lawful act, representing the whole people; or by acquiescing in a spontaneous act of a part of the people. An authorized procedure is one which has the sanction of Congress in the case of a territory, or of the constitution in the case of a state. An extraconstitutional movement for the alteration of the constitution derives its validity from the inherent power of the people. A spontaneous movement becomes effective only by subsequent popular acquiescence, produced usually by force.

Any given method of amendment may be (1) authorized by the constitution; (2) permitted by not being prohibited; (3) prohibited by the constitution; or (4) beyond the constitution's control. Anything beyond the constitution's control enjoys exactly the same status regardless of whether the constitution attempts to authorize or to prohibit it, or merely remains silent on the subject.

Definitions and Analysis. The word "constitutional" in the phrase "constitutional convention" does not refer to the constitutionality of the convention.

Any dispute as to whether or not a convention is a "revolution" is merely a dispute over definitions; for the word "revolutionary" may equally well mean "unlawful and violent" or merely "unauthorized by the constitution."

Each of the three classes of changes in constitutions—i.e., authorized, extraconstitutional, and spontaneous—may take the form of a convention; this gives us three sorts of conventions.

Spontaneous conventions, not being bound by law, can furnish no useful precedents.

Unauthorized conventions are valid. Conventions unauthorized by the constitution have been held in the United States on over thirty occasions. It is now too late to question their validity. Such conventions have never been regarded by the courts as authorized by the constitution. In fact, at least one court (Rhode Island) has held them to be impliedly prohibited, by the fact that the constitution mentions another method of amendment. Implied prohibition is as effective as express prohibition. Thus such conventions cannot be

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considered as held under the constitution, for under the constitution they would be unconstitutional. Yet their validity is unquestioned except in Rhode Island. They owe their validity to "the natural right of the people . . . . . to provide for the alteration and amendment of their fundamental laws."

In twelve states (Arkansas, Connecticut, Indiana, Louisiana, Massachusetts, Mississippi, New Jersey, North Dakota, Pennsylvania, Rhode Island, Texas and Vermont) the constitution impliedly prohibits the convention by expressly authorizing another method of amendment. Yet in all of these, except Rhode Island, Vermont and Indiana, such conventions have been held. In Indiana,[2] Louisiana, North Dakota and Pennsylvania the courts have stated that such conventions are valid; and in Vermont and Massachusetts there have been official expressions of opinion to the same effect.

Thus conventions called by the people, speaking through their electorate at a regular election, are of unquestionable validity; and are extra or supraconstitutional, rather than constitutional.

Conventions have even been held on five occasions in spite of express prohibition in the constitution, and on four other occasions in a different manner from that authorized by the constitution. These cases lend weight to the theory that all conventions are extraconstitutional in their nature, even including those apparently authorized by the constitution.

Who enacts the convention act? The people enact the convention act, where they invoke the initiative. Where the constitution requires that a convention act be referred to a popular vote, the voters call the convention. Where the constitution permits the legislature to call a convention, it is probably the act of the legislature alone, unless we hold that the people ratify the action by voting under the act, or by not invoking the referendum against it.

From the four cases in which the people disregarded the constitutional provisions for holding a convention and held one in another way, it is arguable that a convention, called by the people under authority granted by the constitution, stands upon no different footing from one held when the constitution withheld this authority.

[2] On July 13, the Indiana Supreme Court declared invalid the act of the legislature providing for a constitutional convention, holding that the question of calling a convention must first be submitted to popular vote. Bennett v. Jackson.

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In the absence of applicable constitutional provisions, legislatures have sometimes called conventions without taking a popular vote; but the validity of such conventions nowadays may be doubted.

Where the legislature submits the entire convention act to a popular vote, it is clear that the voters enact the act. The same is probably true when the people vote on the mere question of holding a convention, under an act which already purports to have been passed by the legislature; for the passing of a convention act is not within the strictly legislative powers of the legislature.

By analogy a similar constitutional provision may possibly become a popular enactment by reason of popular action being taken under it. Thus it is possible that all provisions, whether statutory or in constitutions, for the holding of conventions are in reality given their entire validity by popular action thereunder.

Nevertheless, the people have not the machinery to hold a convention, unless they are assisted either by the legislature or the constitution. It is preferable that this machinery be provided in detail by the constitution, as the people will not then be subject to the whim of the legislature, but may have a convention whenever they desire to exercise their unquestionable right to have one.

The only action which could be characterized as distinctly that of the legislature alone would be for the legislature both to call the convention and to elect the delegates, without any popular participation at any stage of the proceedings.

Legislatures as conventions. A state constitution is a legislative act of the people; but there is a marked distinction between the legislative powers of the people and the legislative powers of the legislature.

In exercising the legislative method of amendment, the legislature acts as a convention, being specially empowered thereto; but with this difference, that it is much more strictly bound to the terms of its warrant of authority than is an ordinary convention. The legislature owes its powers, in this connection, to an express grant.

As to whether the legislature can act as an ordinary convention without a similar express grant, the authorities are divided. This can be done in North Dakota, but not in Indiana. It is clear, however, that the legislature cannot claim this right under its general grant of legislative powers.

Executive Intervention. The convention, although called at irregular intervals, is really a fourth branch of the government, and hence should enjoy the same independence from each of the three regular branches as they do from each other.

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The governor cannot veto a legislative act which provides for a popular vote on calling a convention, under provisions in the constitution, but can veto one which prescribes the details. Thus, if the constitution provides for the details, the governor cannot prevent the holding of the convention. The authorities disagree as to whether the governor can veto a convention act in states where the constitution is silent on the subject of conventions. The governor cannot veto an initiative statute which either calls a convention or prescribes the details.

All the foregoing gubernatorial interference is exercised, however, under the governor's legislative, rather than under his executive powers. In his executive capacity, the governor is often the authoritative official to decide whether or not a new constitution is legal. Similarly, the federal executive has the power to settle this question, acting under either of two clauses in the Constitution of the United States, one of which guarantees a republican form of government to each state and the other of which authorizes the President to maintain order in any state which requests it. The governor participates to some extent in this federal interference by requesting it.

Legislative control. The question, "Can the legislature amend the convention act?" involves three questions: What is the general power of the legislature to interfere with conventions? Who enacted the act? Can the legislature amend that which the people have enacted?

Assuming that the subject matter of the amendment is within the delegated powers of the legislature, but that the people enacted the original act, then it is certain that the legislature cannot amend it. But the legislature can amend a convention act passed solely by it, unless we adopt the theory that the people have assumed responsibility for the act merely by participating in an election held under it.

The power of the legislature to control the convention depends largely upon who passes the convention act. If the legislature passes it, it probably is not binding upon the convention; if the people pass it, it probably is binding. The confusion of precedents and authorities upon this point is largely due to a failure to analyze the source of each of the various individual statutes.

It is clear that the legislature cannot bind a convention which is held under the constitution; unless, of course, the constitution should authorize such interference. Perhaps, however, the legislature can impose restrictions upon a convention to the same extent that it can upon the judiciary; but this may be doubted, for the judiciary needs

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legislative regulation, whereas the convention, being a legislative body, can pass its own incidental legislation. Where conventions have acceded to legislative restrictions, this merely proves that the restrictions seemed reasonable, not that they were binding. The convention would lose a large part of its usefulness if it were subject to legislative control.

It is clear that the legislature has no power to abolish a pending convention, except perhaps in cases of great emergency. But the legislature may possibly be able indirectly to eliminate a convention, by withholding funds. And the legislature is in a position to direct the course of popular control of conventions, by framing the convention act.

In case the legality of a convention is in doubt, the legislature may be in a position to determine it, by recognition or non-recognition, or by soliciting federal intervention; or, if a federal question is involved, the legal standing of a convention may, in some instances, be determined by Congress.

Popular control. A convention act, enacted by the people, is absolutely binding upon the convention.

The electorate can amend a convention act, regardless of whether it was originally passed by the legislature alone, by the legislature and the electorate, or by the electorate alone.

No one, except the people as a whole, can acquire a vested right in a convention movement. The electorate can abolish the convention at any time, or merely nullify its work by refusing to accept it.

The people have a right to instruct their delegates, but the instructions will have a moral rather than a legal force.

Convention sovereignty. The conventions of the Revolutionary war period exercised sovereign powers, by necessity. The same may be said with respect to secession (not strictly constitutional conventions), reconstruction and territorial conventions. But these furnish no precedent for state conventions in times of peace; the objection, however, being to the weight, rather than to the admissibility of the evidence. The doctrine of convention sovereignty, so-called, merely represents oratorical flights of fancy, and goes no further in actual practice than to assert that the convention possesses incidental and emergency powers, and is independent of legislative control.

A convention has no right to legislate. But it can validate its legislation by inserting it in the constitution, or by a blanket validating-clause in the constitution, or by submitting the legislation to the people. And if the constitution or a convention act enacted by the people

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exempts the convention from the necessity of submitting its work to the people, it probably can legislate to its heart's content.

A convention can pass such rules and ordinances as are necessarily incident to its business of constitution-framing, or which are necessary to taking the popular vote on the changes submitted by it or to putting its constitution into effect.

The principle whereby territorial and reconstruction conventions have exercised powers entrusted by the Constitution of the United States to the state legislatures may possibly be extended to state conventions.

Judicial intervention. The courts require a strict compliance with the constitutional provisions relative to amendment by the legislative method, but are not so strict with respect to constitutional provisions relative to the convention method.

It is an open question whether courts will interfere with a convention in respect to matters not regulated by the constitution; although probably they ought not to. But it is clear that they cannot and will not interfere in the internal affairs of a convention.

The weight of authority is that the courts cannot interfere after the adoption of a change by the people, the question then having become political rather than legal; but this doctrine may not apply to amendments which do not go to the root of the whole structure of the government. The value of a judicial determination as to the validity of a government, is minimized by the fact that a court is bound to decide in favor of the constitution under which it holds office.

But a different question from that of judicial interference with the proper functions of a convention is that of judicial interference with the convention in matters outside its proper functions; the law being clear that a court may stop an ultra vires act of a convention as readily as it would stop an ultra vires act of any other department of the government.

The United States courts have no power to interfere with a convention, except in case of the violation of the United States Constitution or where some other federal question is involved, such as the election of congressmen.

The courts will assist a convention to secure its rights, much the same as they would assist any other branch of the government. In states where the courts do not interpret their advisory duties too strictly, they will probably assist the convention by judicial advice, much the same as they would assist any other branch of the government.

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Constitution inapplicable. Although it is true that the old constitution remains in full force during the sitting of the convention, this does not necessarily mean that it applies to the convention, especially with respect to such constitutions as are entirely silent on the subject of conventions.

From the four cases in which the people disregarded the constitutional provisions for holding a convention and held one in another way, we may infer that constitutional provisions for the holding of a convention are probably merely directory. But, like a convention act, they may be made mandatory by popular action thereunder.

From the holding of conventions on over thirty occasions when impliedly prohibited by the constitution, and on five occasions when expressly prohibited by the constitutions, we may infer that the constitution cannot prevent the holding of a convention. By the same token, it should not be able to restrict a convention. Consequently, and from the further fact that it does not even purport to apply, the constitution has absolutely no application to extraconstitutional conventions. Unamendable portions of a constitution may be amended by a convention, although not by the legislative method.

Conventions, like other branches of the state government, are, however, bound by the Constitution of the United States.

Internal Procedure. A convention is the sole judge of its own membership. This right carries with it the power to provide for the filling of vacancies and to expel members.

It can hire a hall, choose officers and employees, adopt rules, purchase supplies, perpetuate its records and arrange for all necessary printing. It need not employ the regular state printer. It may bind the state credit for its legitimate expenses. It may maintain order and punish both members and outsiders for direct contempt. In general, it has all powers necessarily incident to the business delegated to it. It can probably reconvene after the popular adoption of its proposals, to codify and promulgate the amended constitution; at least it can reconvene for the latter purpose.

Status of delegates. The term "officer" in a constitution means a person holding office under that constitution. Thus, although delegates to an extraconstitutional convention are "officers," they are not "officers" within the meaning of the constitution.

It would be anomalous for the delegates to take an oath to support the constitution which they have assembled to overturn, in a manner impliedly prohibited by it; and so this is rarely done. But as the

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Constitution of the United States is binding upon them, they should swear to support the latter; and should also swear to perform faithfully the duties of delegate.

Delegates are probably entitled to the same privileges and immunities as are inherent in members of the legislature.

Submission of amendments. Submission of amendments to the people is necessary when required by the constitution, or by a convention act which the people have enacted. And there is some authority to the effect that, apart from any such requirement, the work of an extra-constitutional convention is not valid until it has been ratified by a popular vote. This is probably true at least in cases in which the convention is called by the legislature acting alone.

The legislature cannot change the time for submission, for that would amount to amending the convention act, which is impossible if the people originally enacted it; and would amount to legislative interference, which also is illegal. But the convention, by the force of necessity, has the right, even if the convention act is popular in its nature, to change the time for submission, if their work is not completed in time to submit on the date set.

There is no inherent difference between a new constitution and an amended constitution. The phrase "specific and particular amendment," or similar phrase, in a constitution means merely "amendment," or at the most a single definite proposition, as distinguished from a vague general need for a number of changes.

A convention called to make a general revision may submit a number of separate amendments, or a new constitution, or a new constitution plus a few separable propositions. Every distinct proposition not vital to the scheme as a whole ought to be submitted separately.

The convention can lawfully enlarge or reduce the electorate to which it submits its work, subject only to the provisions of the Constitution of the United States. In the absence of restrictions contained in an act on which the people have voted, the convention may lawfully prescribe all the details for submission and promulgation of the amendments recommended by it.

Acquiescence. The validity of all constitutional changes rests, in the last analysis, upon "the assent of the people." Lapse of time, accompanied by popular and governmental acquiescence, will cure almost any informality; but this cure affects merely the results, and does not relate back and validate the means.

The validity of a convention-born amendment rests not on the

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submission of the amendment to the people; but rather on the submission to the amendment by the people.

All governments derive their just powers from the consent of the governed, rather than from a compliance with any mere legal formalities in the method of their inception.

ROGER SHERMAN HOAR.[3]

Legislative Activity in Massachusetts, 1916. In the last few years there has been much comment on the decline of American state government, and at the same time much complaint of the steadily increasing amount of new legislation. Back of this annual flood of laws poured out by the legislature upon the state is a much larger flood of bills poured in upon the no less unfortunate legislature, which must struggle with it as best it can. It seems reasonable to suppose that not all of this material is suited to legislative activity, and that, if the legislature was relieved of the work less adapted to it, not only would the annual output of laws be reduced in amount, but it would also be improved in quality. In short the legislature would become more efficient. And between inefficiency and decline of influence there must be some causal connection.

On the hypothesis that subject matter and efficiency are related, the first step is to break up into its component elements the mass of legislative material, and to sift out those which are relatively more suitable from those which can be better handled elsewhere. The present study is an analysis and classification of the subject matter with which the general court of Massachusetts had to deal in its regular annual session of 1916, and is intended to show merely the general trend of legislative activity. It is based on an examination of the 2288 house and 537 senate documents of the session, including 2026 bills and resolves referred to committees, of which 861 bills and resolves eventually passed both branches of the legislature.

The general court of Massachusetts consists of a senate of 40 members and a house of representatives of 240 members, all of whom are elected annually. Each house elects its presiding officer, who makes the committee assignments for that house. There are 34 regular committees, besides the committee on third reading which has purely formal work, and in addition there is usually a special committee on the governor's

[3] A member of the commission to compile information and data for the use of the Massachusetts Convention of 1917, and formerly state senator and assistant attorney general of that state.

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message. The committees are all joint in membership except the house and senate committees on ways and means; each is composed of from three to five senators and from eight to eleven representatives.

All bills and resolves must be presented within the first ten days of the session, except on special leave, and must accompany either a petition by a citizen of the commonwealth or the report of a state officer or agency. These bills are inspected in the senate by its committee on rules, or in the house by the speaker, and then are referred concurrently by the presiding officers of both houses, in the absence of objection, to the proper committees.

Though the session, which begins in January, is not limited in length, every bill must be reported from its committee before the middle of March, with appropriate recommendation. Adverse reports are "ought not to pass," "leave to withdraw,"[1] and on official departmental reports "no legislation necessary"; postponement is by reference to the "next General Court." A favorable report may present the bill in the original form, modified, or completely redrafted. Also the house committee on ways and means has power to originate appropriation bills based on existing law. This power, and that of drafting bills on the basis of official reports, account for the fact that sometimes more bills are reported by the committee and enacted than were previously referred to the committee. (Cf. ways and means and counties in Table I.)

Bills reported may be recommitted by vote, and those involving an expenditure of money go in due course to the committee on ways and means. As the joint committee on ways and means receives most of its bills from the senate, it and the senate committee on ways and means have been grouped together in the tables; the house committee does much independent work in originating appropriation bills.

Table I contains a general classification of all bills (including resolves and official reports containing drafts of bills) referred to the committees, and of all bills passed by both branches.[2] In each of the columns marked "Group," the left-hand file of numbers represents bills committed, the right-hand file (italics) bills passed. The columns marked "Vetoed" give the numbers of bills passed which met with the

[1] "Leave to withdraw" is used in connection with bills introduced on petition; "ought not to pass" with bills introduced on leave by a member.

[2] The figures for bills passed include, in addition to those signed and those vetoed, 13 bills which became law without executive approval; they do not include 8 bills which passed both houses but were recalled and not repassed.

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TABLE I—*Classification of bills committed and bills passed*

COMMITTEE	GROUP I		VETOED	GROUP II		VETOED	GROUP TOTAL		VETOED
1. Agriculture	32	*14*		16	*5*		48	*19*	
2. Agriculture and public health	13	*2*		2	*2*		15	*4*	
3. Banks and banking	14	*5*		4	*1*		18	*6*	
4. Cities	15	*6*	*1*	96	*49*	*3*	111	*55*	*4*
5. Constitutional amendments	23	*1*		0	*0*		23	*1*	
6. Counties	2	*2*		6	*16*		8	*18*	
7. Education	58	*18*		13	*9*		71	*27*	
8. Election laws	41	*7*		10	*2*		51	*9*	
9. Federal relations	19	*0*		0	*0*		19	*0*	
10. Fisheries and game	49	*13*	*1*	17	*7*		66	*20*	*1*
11. Harbors and public lands	16	*2*		36	*20*		52	*22*	
12. Insurance	33	*14*		4	*2*		37	*16*	
13. Joint judiciary	189	*30*	*2*	9	*4*		198	*34*	*2*
14. Labor	23	*7*		0	*1*		23	*8*	
15. Legal affairs	114	*22*	*1*	20	*14*		134	*36*	*1*
16. Mercantile affairs	79	*10*	*1*	38	*27*		117	*37*	*1*
17. Metropolitan affairs	0	*0*		126	*44*	*2*	126	*44*	*2*
18. Military affairs	50	*21*		2	*3*		52	*24*	
19. Municipal finance	10	*5*		69	*54*	*3*	79	*59*	*3*
20. Public health	79	*16*		8	*6*		87	*22*	
21. Public institutions	52	*24*	*1*	28	*17*		80	*41*	*1*
22. Public lighting	14	*3*		7	*2*		21	*5*	
23. Public service	79	*13*		68	*30*		147	*43*	
24. Railroads	7	*2*		11	*6*		18	*8*	
25. Roads and bridges	44	*8*		39	*23*		83	*31*	
26. Rules, joint	3	*0*		2	*0*		5	*0*	
27. Social welfare	90	*15*		17	*5*		107	*20*	
28. State house and libraries	13	*8*		3	*1*		16	*9*	
29. Street railways	19	*4*		14	*4*		33	*8*	
30. Taxation	53	*16*		2	*1*		55	*17*	
31. Towns	3	*2*		40	*32*	*1**	43	*34*	*1**
32. Water supply	0	*0*		15	*13*		15	*13*	
33. Redistricting (special)	0	*1*		0	*0*		0	*1*	
34. Governor's message (special)	37	*7*		0	*0*		37	*7*	
35. Ways and means (house)	16	*144†*		3	*2*		19	*146†*	
36. Ways and means (joint and senate)	12	*11*		0	*1*		12	*12*	
37. No committee				0	*3*		0	*3*	
38. Not accounted for								*2*	
Totals	1301	*453*	*7*	725	*406*	*9**	2026	*861*	*16**

*One bill passed over veto. †Includes 125 appropriation and revenue bills.

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governor's veto; as indicated, one bill was enacted over the veto. The vetoed bills are included in the totals, because they constitute part of the completed work of the legislative branch as much as the others which became law.

Besides the tabulation of bills committed, passed, and vetoed, Table I represents a classification of subject matter, in Groups I and II. The basis of classification is, broadly, the field of application of the bills—state-wide as against specific. Group I includes the bills affecting all the inhabitants of the commonwealth in general, or all of a class, in one of three ways: (1) directly, by general regulation; (2) through local units, by laws applying alike to all localities of a class (or all except Boston); or (3) through specific state agencies or departments, by laws applying to their creation, organization and general functioning. Group II, on the other hand, contains the bills affecting more or less specific agencies, sections, parts, or individuals, from among all the inhabitants, or bills authorizing, ordering, or ratifying a specific act or class of acts by a specific agency or individual. It includes: (1) bills affecting specific state agencies in minor ways; (2) bills affecting specific localities; and (3) bills relating to specific individuals or corporations.[3] The distinction between the third subdivision of Group I and the first of Group II, both applying to specific state agencies, is perhaps confusing; it is largely one of degree, of major and minor powers, of general and specific instructions, or of legislative as against administrative activity. It was necessary in order to mark out the extent to which the legislature meddles in administrative details.

In discussing the legislative work of the committees, we must start with the principle that the primary function of a state legislature is to legislate for the state, the whole state—one might almost add, 'and nothing but the state.' Presumptively then the work of the committees represented in Group I is a proper function of the legislature; and on the other hand the presumption is against the propriety of Group II, though of course in a few instances this is unjust.

A consideration therefore of the relative proportions of the work handled under the two groups by each committee, will give one criterion

[3] Group II comprises in the main bills authorizing a specific act *by* a specific state agency, locality, individual, or corporation; it therefore does not include claims and pensions to be paid to a specific individual by the state; those are part of the state-wide policy in substitution for legal liability of the state, and come in group I.

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of the value of that committee, of its right to existence. It will tend to show where the legislature is most inefficient, for to be compelled to do unsuitable work is to be compelled to work inefficiently.

Consider first the committees on cities, metropolitan affairs, municipal finance, towns, and water supply, all of which have much to do with specifically local legislation; their combined total of bills committed under Group II is 346, or 93 per cent, under Group I only 28, or 7 per cent of their total work. Also their combined total of bills passed under Group II is 192, or 94 per cent, and under Group I 13, or 6 per cent of their total. Counties also has an absolute balance against it. So has harbors and public lands, while public service, roads and bridges, and street railways have almost one-half their work in Group II.

On the other hand, consider the large balances in favor of education, military affairs, public health, social welfare, taxation, and particularly joint judiciary and legal affairs. And the total work of all committees balances, for bills committed, at 64 per cent in Group I and 36 per cent in Group II, and, for bills passed, at 53 per cent for Group I, and 47 per cent for Group II.

From this it appears that Group II, the generally unsuitable work, is chiefly concentrated in a few committees—those having to do with local government. The problem of making the Massachusetts general court efficient thus largely resolves itself into a question of local home rule, or some equivalent.[4] At present the Massachusetts constitution contains no home rule provision.

Table II shows a more detailed analysis of the work of the committees as it affects specific localities. The part of the work of the four "major" committees there tabulated is confined almost exclusively to municipal government; that of the "minor" committees tabulated relates partly to other special local legislation as well. The interference of the legislature in these cases is often solicited—necessarily so under the present system—though sometimes unwelcome; but in either case interference to such an extent is demoralizing both to local government and to the legislature itself; it transplants to the state house all the bitter feuds of local factions.[5]

[4] Cf. Report of the joint special committee on Legislative Procedure, p. 66 ff. House No. 280 (1915).

[5] An example also of the waste of time is senate bill 257, "An act to revise the charter of Springfield," which was 95 pages long when introduced, and as Chapter 371 of the acts occupies 42 pages of small type. It gave the city the option of two charters.

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TABLE II

Bills affecting specific localities (except Boston and the Metropolitan District)

COMMITTEE	COMMITTED		PASSED	
Major Committees				
Cities				
Claims and pensions	11		8	
Financial powers	3		3	
Charter changes	32		13	
Other powers	16		9	
Firemen and police	2	64	1	34
Municipal finance				
Debts permitted	48		41	
Taxes and appropriations permitted	5		3	
Miscellaneous	14	67	8	52
Public service				
Salaries of specific officers	20		5	
Civil service	14		8	
More employees	12		7	
Miscellaneous	8	54	6	26
Towns				
Organization	13		10	
Creation of new towns	5		3	
Claims permitted	5		5	
Miscellaneous	17	40	14	32
Minor Committees				
Agriculture and public health	1		1	
Counties	6(+26*)		16	
Education	4		4	
Election Laws	10		2	
Fisheries and game	14		6	
Harbors and public lands	3		3	
Joint judiciary	2		0	
Legal affairs	2		0	
Mercantile affairs	4		1	
Military affairs	1		1	
Public health	2		1	
Public lighting	1		0	
Roads and bridges	4		4	
Social welfare	5		2	
Street railways	1		0	
Taxation	2		1	
Water supply	13		12	
Ways and means (house)	(10 recom.)			
Ways and means (joint and senate)	(35 recom.)			
Grand total—all committees	300		198	

* Recommitted.

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The situation of Boston presents a somewhat different problem, and the legislature has attempted to meet its responsibility in part by creating the metropolitan district, in part by interference in Boston city government.[6] The extent of this interference is shown in the upper half of table III; bills affecting surrounding towns and the city of Cambridge, which are practically a part of Boston, are not shown. The metropolitan district, which geographically includes Boston and adjoining towns, is the jurisdiction in which the metropolitan park commission, the water and sewerage commission, and the directors of the port (this last now merged with a state-wide commission) perform their respective functions on behalf of the state. The legislation for this district takes up almost the entire time of the committee on metropolitan affairs, and part of the time of other committees besides, as shown in the lower half of table III. The total work given to the region of Boston is thus very large. No doubt there is some justification for closer state control of the state metropolis, but it should be administrative control as far as possible. The legislature is too prone to give minute directions to the metropolitan commissions; 71 bills were devoted to instructions as to the construction, improvement, or control of specific streets, parks, rivers, harbors, public utilities, etc., 56 per cent of the total bills referred to metropolitan affairs.[7]

The same criticism as to interference in details of administration—often for political purposes, and in all cases demoralizing to any consistent administrative policy—applies with almost equal force to other committees. Harbors and public lands handled 32 bills, 62 per cent of its total, relating to specific instructions as to surveys and improvements of public lands and harbors;[8] and to roads and bridges were referred 33 bills, or 40 per cent of the total, directing the construction

[6] Typical bills of this class are: in cities, house 98, "That Boston may pay sum to mother of late Ralph T. Shea;" H. 731, "On assessing sidewalks in Boston;" H. 732, "On more pay for Boston police at crossings;" H. 1281, "To restore P. J. Flatley to Boston police;" H. 864, "On compensation of Boston firemen on probation;" in Metropolitan Affairs, H. 354, "For entrance to subway at Park Square;" H. 973, "On water used by several city departments in Boston;" H. 1703, "For regulation and paving of D or E streets on Commonwealth Flats, South Boston;" H. 1546, "On automatic sprinklers in Boston tenement houses;" in Social Welfare; H. 1140, "For pensions for certain lamplighters formerly in the employ of Boston;" S. 234, "That Boston school committee may retire certain janitors, etc."

[7] Cf. Report on Legislative Procedure, p. 83.

[8] Cf. Report on Legislative Procedure, p. 77 ff.

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TABLE III

Bills affecting only Boston and the Metropolitan District

COMMITTEE	COMMITTED	PASSED
(*Boston*)		
Cities		
Organization	8	3
Claims and pensions	13	6
Employees	3	1
Firemen and police	10 34	3 13
Metropolitan affairs		
Boston government	6	1
Boston utilities	4	2
Boston miscellaneous	8 18	2 5
Municipal finance	2	2
Public service	3	2
Social welfare	9	2
Street railways	2	1
Ways and means (house)	(9 recom.)	
Ways and means (joint and senate)	(10 recom.)	
Total—Boston	68	25
(*Metropolitan District*)		
Metropolitan affairs		
General legislation	17	3
General organization	6	4
Claims	5	1
Employees	2	1
Streets, parks, etc	34	11
Port and rivers	13	4
Transportation	14	4
	(+ 1 recom.)	
Miscellaneous	17 108	11 39
Public service	6	2
Railroads	2	0
Governor's message (special)	3	0
Ways and means (house)	2	10
	(+28 recom.)	
Ways and means (joint and senate)	0	1
	(+22 recom.)	
Total—Metropolitan District	121	52
Grand total	189	77

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or improvement of specific highways by the highway commission.[9] And 38 bills relating to the establishment or improvement of institutions for the insane, or of hospitals, were referred to public institutions, and constituted 47 per cent of its work; while in public service there were 30 bills for salary-increases in certain state agencies, and 20 more authorizing salary-increases for specific local officials—34 per cent of its total work.[10] The joint special committee on legislative procedure in 1915 pointed out in its report (p. 75) that many bills were introduced "asking for something plainly under the jurisdiction of some department, board, or commission, and within their power to grant."

To ameliorate the present system the special committee recommended that no salaries be increased, or pensions granted, until they had been approved by the department head, the mayor, or other superior official, as the case might be. Similarly it was recommended that no petitions for legislation as to matters under the jurisdiction of existing state departments or other agencies, including those of the metropolitan district, should be favorably reported and enacted, unless they had previously been submitted to the appropriate agency and been reported by it with recommendations. These proposals have not been adopted by the general court.

Another group of bills exercises a demoralizing influence on the legislature besides wasting its time—the bills granting the payment of claims and individual pensions, or authorizing such payments by cities, towns, or counties. (Cf. Table IV.)

A larger measure of home rule would eliminate the latter, and some provision for legal settlement or litigation of such claims not only would relieve the legislature of some unnecessary work, but also would do greater justice to claimants. The present system tends to make political influence one essential of a valid claim, and the criterion of its proper amount.

Finally, in Table V is tabulated the work of those committees to which bills are customarily recommitted after report by committee. It will be seen that the work of the four committees, and particularly of those on ways and means, consists chiefly of recommitted bills, which may be once more reported favorably, adversely, or in new draft.

[9] The Report on Legislative Procedure emphasizes this very strongly (p. 79 ff.).

[10] The special committee recommends either that department heads be given full discretion in fixing salaries, or preferably that salaries be standardized (p. 60 ff.).

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TABLE IV

Claims and individual pensions

COMMITTEE	COMMITTED	PASSED
(*State claims*)		
Agriculture	4	2
Education	2	2
Harbors and public lands	1	0
Metropolitan affairs	5	1
Military affairs	15	3
Public institutions	9	1
Social welfare	3	2
Ways and means (house)	10 (+21 recom.)	11
Ways and means (joint and senate)	3 (+20 recom.)	1
Total—state claims	52	23
(*Local claims permitted*)		
Cities	24 (Boston—13)	14
Counties	2 (+ 3 recom.)	2
Towns	5	5
Total—local claims	31	21
Grand total—all claims	83	44

TABLE V

*Bills committed and bills recommitted**

COMMITTEE	COMMITTED			RECOMMITTED			TOTAL
	Group I	Group II	Total	Group I	Group II	Total	
Ways and means (house)	16	3	19	181	148	329	348
Ways and means (joint and senate)	12	0	12	73	151	224	236
Counties	2	6	8	2	23	25	33
Rules (joint)	3	2	5	14	0	14	19
Other committees				1	2	3	3
Total	33	11	44	271	324	595	639
Third reading				46	22	68	

* The figures for bills recommitted are based on the official Bulletin of Committee Hearings and Record of Legislative Action, and are probably not complete.

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The fact that the house committee on ways and means thus handles at one time or another 17 per cent of all bills introduced—including 125 appropriation bills based on existing law, and practically all other bills containing appropriations or financial regulations—and a much larger percentage of all the bills which are finally enacted—accounts for its important position, unusual in a state legislature. In influence it replaces the rules committee, which has no power to control legislation by special rule, the session being unlimited in length. It should further be noted that the above 17 per cent does not include the bills passed on by the house committee in its capacity as a constituent part of the joint committee on ways and means.

The function of the committee on third reading is merely to perfect the form of bills recommitted to it.

In brief then, one phase of the movement to make our state legislatures efficient relates to the subject matter with which they deal. To confine the legislature to those matters of state-wide policy with which it alone is fitted and intended to occupy itself,—to eliminate from its work the elements which from their nature it can handle only unsuccessfully, which waste its time, while preventing proper consideration of its proper work, and which offer urgent temptations to petty political log-rolling and pork,—this is a most pressing need of state government today. The grosser forms of corruption have gone. The machinery of election and procedure is on the way to improvement. The question now is one of efficiency, rather than of popular responsibility, and for efficiency not only must the organization and procedure be businesslike, but the subject matter must be adapted to the body which is to deal with it. The state must redistribute its work. The question of subject matter is the more fundamental, for, if the work of the legislature is confined largely to matters of state-wide importance, on the one hand it will attract more popular interest and create a closer bond of responsibility between electorate and representatives, and on the other hand it will render more feasible the reforms of organization which are also necessary. It will be difficult to persuade any one that a reduction of the size of our lawmaking bodies is advisable, so long as the legislatures are up to their ears in work on an increasing number of special bills.

How this undesirable legislative activity is to be eliminated is a problem which must be dealt with on the facts in each state, after a much more exhaustive analysis than this pretends to be. In Massa-

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chusetts however it seems safe to state that the greatest single obstacle to legislative efficiency is the lack of local self-government. Of all the 2026 bills referred to all committees, 15 per cent, and of all the 861 bills enacted, 23 per cent related to specific localities not including Boston and the metropolitan district. Add Boston and the district and the result is 24 per cent of the bills committed, and 32 per cent of the bills passed. (Cf. Tables II and III.) And this does not include the bills under Group I, applying to all localities of a class. A constitutional provision for home rule, or a state administrative commission or department of local government—perhaps on the analogy of the English local government board,—or a combination of the two, seems the only adequate remedy. No one remedy would eliminate all the specific local bills, but any one would eliminate the majority, and in addition many of the general local laws.

Moreover, the fact that the above 24 per cent of specific local bills committed constitutes 67 per cent of all the bills of Group II handled by all committees, and that this 32 per cent of specific local bills passed is 68 per cent of all Group II bills enacted, show the overwhelming importance of the local government question as compared to the problems of claims, pensions, and legislative interference in the details of state administration.

Figures of these proportions can afford a liberal discount for inaccuracy and subjective bias and yet indicate a disturbing trend of legislative activity in Massachusetts. It is to be hoped that the constitutional convention will not disregard the meaning of the facts upon which the figures rest and for which they speak.

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New York State Police. "The New York State Troopers" is the name by which will be known the body of police authorized by the New York State legislature. The force is to be directed by a superintendent appointed by the governor with the consent of the senate. He will serve for five years and receive a salary of $5000. He is to be removable by the governor after charges have been presented to him, and he has been given an opportunity to reply to them. He is to appoint a deputy with a salary of $2500, and the necessary clerical assistants.

There will be four troops, each of which will consist of a captain, a lieutenant, one first sergeant, four other sergeants, four corporals, a

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sadler and blacksmith with the rank of corporal, and forty-five privates. These men are to be appointed and, after a hearing, removed by the superintendent. They must be citizens of the United States between 21 and 40 years of age, will be appointed for a term of two years, and will not be permitted to resign without the superintendent's consent.

Equipment of the troops and the rules for their administration are entirely in the hands of the superintendent with the approval of the governor. Their duty is "to prevent and detect crime and apprehend criminals," but they are not to be active in a city except by the direction of the governor or on invitation of the mayor of the city with the governor's consent. The law is simple and concise, and it seems to be excellently drawn with a view to centralizing responsibility in the interest of efficiency. The superintendent, under the governor, has absolute control.

The reason for the creation of this force is the growing density of the rural population making the sheriff and constable entirely inadequate; and the increase of good roads and rapid transportation, particularly with automobiles, which enable criminals to make quick escapes. It has also been influenced somewhat by the large expense entailed in calling out the national guard and the disinclination of the members of the national guard to serve in local disturbances, such as strikes and riots. The success of such an organization of police in Northwestern Canada, on the Texas frontier, and in Pennsylvania (the New York law was largely copied from the Pennsylvania system) has greatly encouraged those who have been advocating this police force in New York. The Pennsylvania constabulary has not been sufficiently supported financially, but it is encouraging to know that it has been wholly free from political influences and has been an efficient instrument of law and order.

Opposition to the bill was of two kinds. First, the socialists and anarchists have opposed it in a sort of academic way as strengthening the capitalistic system of society and as likely to perpetuate aspects of political and economic organization to which they are opposed. In the second place, the practical opposition, and the only sort which was at all effective, was precipitated by the trade unions. They printed a somewhat formidable illustrated pamphlet attacking the Pennsylvania constabulary; have constantly referred to such police as "cossacks;" and in New York fought the whole idea from the beginning to the last minute. The bill had to be forced through over their strenuous protest and persistent opposition. The cry of "Home Rule" in police administration was raised.

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Governor Whitman has appointed as superintendent of the "Troopers," Major George F. Chandler, who has served for more than a decade in the New York national guard, has seen service on the Mexican frontier, and was president of the examining board for officers of infantry throughout the boarder service. His appointment has met with general approval in the state.

The "Troopers" will wear an ash gray, military uniform; be equipped with 45 calibre revolvers and 30 calibre carbines. They will patrol the roads on horseback in pairs, and be equipped and trained to give first aid in case of accident. They are to serve the community generally. They have adopted the motto "Obedience to Law is Liberty." There is bright prospect that this new instrument of government will commend itself to all supporters of an efficient and orderly society.

EDGAR DAWSON.

Summary of Budget Provisions.[1]

STATE	METHOD OF ESTABLISHMENT	RESPONSIBILITY FOR INITIATION OF BUDGET
Connecticut	Laws of 1915, Ch. 302	State Board of Finance
Illinois	Laws of 1917	Department of Finance
Louisiana	Laws of 1916, Act No. 140	Board of State Affairs
Maryland	Constitution Art. III, Sect. 52	Governor
Minnesota	Laws of 1915, Ch. 356	Governor
Nebraska	Laws of 1915, Ch. 229	Governor
New Jersey	Laws of 1916, Ch. 15	Governor
New York	Laws of 1916, Ch. 130	Committees on Finance and Ways and Means
North Dakota	Laws of 1915, Ch. 61	Budget Board
Ohio	Laws of 1913, p. 658	Governor
Oregon	Laws of 1913, Ch. 284	Secretary of State
Vermont	Laws of 1915, No. 26	Budget Committee
Washington	Laws of 1915, Ch. 126	State Board of Finance
Wisconsin	Laws of 1911, Ch. 583; Laws of 1913, Ch. 728; Laws of 1915, Ch. 606	Board of Public Affairs

Filing of Estimates. In all of the states, the heads of departments, commissions, boards and institutions are required to file estimates of

[1] Prepared by the Massachusetts commission to compile information and data for the constitutional convention.

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appropriations with the governor or budget authority, or with the state auditor, who in turn transmits them to the proper authorities. In Maryland and New Jersey not only department heads but also the legislature and the judiciary must file requests.

In Illinois, New Jersey, North Dakota, Ohio, Vermont and Washington provision is made that all requests must be presented on uniform blanks furnished for that purpose. In Illinois, New Jersey and Vermont the information which the estimates must contain is more or less definitely prescribed.

The state auditor in New Jersey, Ohio and Washington is required to provide the governor or budget board with information as to anticipated revenues and other financial data.

Investigation and Revision of Estimates. After the estimates have been received the governor or budget authority reviews them and submits a budget of annual appropriations and revenue together with recommendations as to the same. An exception to this rule is found in Oregon, where the secretary of state merely tabulates the estimated expenditures and revenues without recommendations. In Nebraska, North Dakota and Vermont, whenever the amount recommended is different from that requested by the department or from the amount appropriated in previous years, reason for such differences must be set forth.

In the laws of Connecticut, Illinois, Maryland, New Jersey, New York, North Dakota, Ohio, Vermont and Washington, the budget-making authority is given special powers of investigation and examination in order to determine the reasonableness of the various requests. In Connecticut, North Dakota, Maryland and Vermont public hearings may be held at which heads of departments may appear to explain their requests.

Special Staff. The New York law provides for a special staff to assist the legislative committees in preparing the budget; while in New Jersey the governor may appoint state officers together with not more than two assistants to form a special committee for the purpose of assisting him. In Illinois there is a superintendent of budget and staff in the department of finance. In most of the other states provision is made that expert and clerical assistance may be obtained.

Submission to the Legislature. The usual provision is that the budget must be submitted at the opening of the legislative session. In the laws of Connecticut, Illinois, North Dakota, New Jersey, New York and Washington, the date on or before which the budget shall be

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submitted is definitely specified. In most cases this must be within two weeks from the commencement of the session; in Maryland, the budget does not have to be submitted until twenty days after the opening of the session, and in the case of a newly elected governor the time may be extended to thirty days; and in Illinois the time is four weeks after the organization of the general assembly.

In New Jersey and Nebraska the budget is required to be submitted in the form of a special message from the governor, thus giving it greater executive sanction. In New Jersey the provision is that the message "shall be in such form that it can be easily understood by the average citizen."

Form and Content of Budget. The budget in every case contains estimates of the proposed expenditures and anticipated revenues for the state during the ensuing year, or for the biennial period in those states where the legislature meets only once in two years. In Maryland, New Jersey and Nebraska the form and content of the budget are prescribed in considerable detail, the New Jersey law going so far as to include a set of rules and sample budget forms at the end of the statute.

Provisions for Consolidated Appropriation Bills. The Maryland constitutional amendment and the New York law require that the budget shall be accompanied by a bill providing for the proposed appropriations clearly itemized. In New Jersey, although there is no provision similar to that of Maryland, "no money shall be drawn from the treasury except by the general appropriation bill and it is the intent of this act that no supplemental, deficiency or incidental bill shall be considered," thus inferring that all appropriations are to be made in a consolidated measure. The Vermont law also provides that all appropriations shall be made in a single budget bill. Under the Connecticut law the board of finance and the joint committee on appropriations may originate any bill they deem necessary. In the other states there is no provision for a general budget bill.

Limitations upon Legislature and Legislative Procedure. Maryland is the only state that attempts to limit the power of the legislative body by providing that the legislature may only strike out or reduce items in the governor's budget. The legislature may, however, initiate appropriations after the governor's recommendations have been disposed of, provided that every such appropriation is made in a separate bill which includes a special tax levy to finance the same. The only other state which attempts anything of this kind is New York, where

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the appropriation bill after it has been advanced to third reading may not be amended without unanimous consent except to reduce or eliminate an item.

Supplementary Budgets. The Maryland amendment and the law of New Jersey recognize that emergencies may arise after the budget has been submitted necessitating additional appropriations. Provision is therefore made that the governor may transmit supplementary budgets for additional appropriations, for which action in Maryland he must receive the consent of the legislature.

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JUDICIAL DECISIONS ON PUBLIC LAW

ROBERT E. CUSHMAN

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Alien Enemies—Debts in Time of War. Fritz Schultz, Jr., Co. v. Raimes & Co. (New York. April 19, 1917. 164 N. Y. Supp. 454.) The defendant sought to restrain the prosecution of certain actions on debts contracted during peace on the ground that the plaintiff, a New Jersey corporation controlled by German citizens, was an alien enemy and as such had no right during the period of the war to appear as plaintiff in the courts of this country. While a nation at war has the undoubted right to confiscate the debts of alien enemies it was held that such confiscation can be authorized only by the definite action of Congress. In the absence of such action the right of the alien enemy creditor is still further protected by existing treaties between the United States and the kingdom of Prussia. The plaintiff, furthermore, was held to be a citizen of the state in which it was incorporated under the doctrine that the corporate body is a distinct entity from the alien owners of its stock and is, therefore, entitled to the privileges and immunities of citizens of the United States.

Appointment of Officers—Power of the Legislature. Dunbar v. Cronin (Arizona. April 18, 1917. 164 P. 447.) The right of the legislature to make an appointment to the office of state law and legislative reference librarian was attacked on the ground that it violated the doctrine of the separation of powers inasmuch as an appointment to office was an executive function. It was held that "where the office is peculiarly identified or associated with the appointing power, as where it has to do with the functions and duties of the appointive power, whether it be judicial, legislative, or executive, the appointment properly belongs to that department." The purpose of creating a legislative reference librarian is to give aid and assistance to the legislature. His work is of a legislative nature and he is in the employ of the legislature as much as any of the numerous attachés of that department. In the absence of any constitutional provision forbidding such an appointment the legislature had power to make it.

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Birth Control—Constitutionality. People v. Byrne. (New York. December 5, 1916. 163 N. Y. Supp. 680. Also February 3, 1917. 163 N. Y. Supp. 682.) The defendant was convicted of selling a contraceptive article and disseminating information relating to the prevention of conception. The statute under which conviction resulted was alleged to impose an unconstitutional restraint upon the free exercise of conscience and the pursuit of happiness. It was held, however, that the statute involved a legitimate exercise of the police power of the state. It is proper for the legislature to determine whether the distribution of the forbidden articles and information is prejudicial to public morals and welfare. The removal of the fear of pregnancy would increase immorality among unmarried persons, while the question of propagation is intimately connected with the "primary right of self preservation" which the state possesses.

Blue Sky Laws—Constitutionality. Hall v. Geiger-Jones Co. (United States. January 22, 1917. 37 Sup. Ct. Rep., 217), Caldwell v. Sioux Falls Stock Yards Co. (United States. January 22, 1917. 37 Sup. Ct. Rep. 224), Merrick v. Halsey and Company (United States. January 22, 1917. 37 Sup. Ct. Rep. 227.) These cases sustain the constitutionality of the so-called blue sky laws of Ohio, South Dakota and Michigan respectively. The three laws are substantially the same and the court, therefore, rests its decision upon the validity of the last two statutes upon its opinion regarding the Ohio act in the case of Hall v. Geiger-Jones Co. The laws forbid the sale within the state of certain classes of securities until a license has been secured. Such license can be had only upon the filing of certain information regarding the character of the applicant's scheme and upon satisfying the licensing commissioner that the undertaking is neither fraudulent nor unsafe. In the judgment of the court the purpose of the law is amply justified as an exercise of the police power to prevent fraudulent practices. It is legitimate to confer the wide powers named in the statutes upon the commissioner since there was no other appropriate means of exercising such powers and since private rights are protected by an appeal to the courts in the case of an adverse decision of the commissioner. The classification of securities and firms brought within the purview of the law is reasonable and not arbitrary. The statutes do not unduly burden interstate commerce inasmuch as the sales of securities which must be licensed are those which are made within the state. It is permissible to bring in from another state any securities free

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from interference, but there is ample authority for the rule that such securities may be sold in the state subject only to such reasonable police regulations as the state may impose upon such sale.

Elections—Canvassing Board Cannot Decide Validity of Suffrage Law. Wells v. Robertson. (Illinois. April 4, 1917. 115 N. E. 654.) The functions of an election canvassing board are purely ministerial. It is no part of their duty or power to determine the constitutional question whether the associate judges of the municipal court of Chicago are officers for whom women may legally vote. They have the power merely to count and tabulate the votes cast and to declare the result. Accordingly such a canvassing board may not be mandamused to recount the votes cast for the judicial officers mentioned and exclude those cast by women. Such a writ of mandamus is not the proper writ by which to determine finally the right to an office, and the denial of such a writ is no bar to a subsequent election contest based on the ground that the votes cast by women for judicial officers were illegally cast.

Elections—Constitutionality of Voting Machine. State v. Keating. (Montana. March 23, 1917. 163 P. 1156.) A statement in the state constitution that "all elections by the people shall be by ballot" does not render unconstitutional a statute providing for the use of voting machines. In the opinion of the court "the provision that elections should be by ballot was employed, not to designate pieces of paper, but a method which would insure, so far as possible, the secrecy and the integrity of the popular vote." "If by its use the main purpose of the constitution is furthered and the elector may cast his vote in secret with the assurance that it will be counted as cast, there can be no sound reason why the method should be dismissed as an innovation upon the letter of the law."

Elections—Disqualification of Majority Candidate Nullifies Election. Woll v. Jensen. (North Dakota. March 26, 1917. 162 N. W. 403.) When the candidate receiving a majority of the votes cast in an election is disqualified to hold the office for which he ran the candidate receiving a minority of the votes cast is not entitled to the office even though the disqualification of the majority candidate is generally known to the voters. It is the rule in England and in the state of Indiana that when such disqualification is known votes cast for the

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disqualified candidate will be credited to the minority candidate on the theory that such votes have been wilfully thrown away. The better rule, and that representing the weight of American authority, is that such votes shall be considered as cast in protest against the qualified candidate and under the American doctrine of a majority rule no one should be deemed elected to office against such a protest of a majority of the voters. When the candidate receiving the majority of votes is disqualified the election is regarded as a nullity.

Elections—Illegal voting at Congressional Primaries and Elections. United States v. Gradwell. (United States. April 9, 1917. 37 Sup. Ct. Rep. 407.) This decision, which disposed of four similar cases, rendered unsuccessful the attempt to invoke certain sections of the criminal code of the United States punishing a conspiracy "to defraud the United States in any manner for any purpose," against those who bribe electors at a congressional election or cause them to vote illegally at a primary election for the nomination of United States senators, inasmuch as these sections are aimed at the prevention of frauds against the revenue service and not at the protection of elections. Equally unsuccessful was the attempt to invoke in like manner the sections of the criminal code aimed at the protection of the negro and penalizing the act of injuring or oppressing them in the free exercise of their constitutional rights and privileges. In view of the fact that Congress has the undoubted power to prevent frauds in the election of its members by the enactment of appropriate legislation the court could not justify itself in applying a strained and unreasonable construction to other legislation for the purpose of making it accomplish an end which Congress did not have in mind. This position is further strengthened by the fact that there are no common law crimes against the United States and that a man cannot be punished under the federal law unless his case comes "plainly and unmistakably" within the provisions of some statute.

Elections—Tie Vote. State v. Council of Incorporated Village of Stryker. (Ohio. December 12, 1916. 115 N. E. 1007.) A local option election upon the question of prohibiting the sale of intoxicating liquors as a beverage which results in a tie is an election within the meaning of the law and precludes the holding of a second election within the period of two years. While a tie vote cast in an election for officers does not constitute an election a tie vote cast in a local option

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election is a rejection of the proposal to prohibit inasmuch as the statute provides that the sale of liquor shall be prohibited "if a majority of the votes cast at such election shall be in favor of prohibiting the sale of intoxicating liquors as a beverage."

Election of United States Senators—Validity—Delegation of Power. Sutherland v. Miller. (West Virginia. March 13, 1917. 91 S. E. 993.) A statute purported to authorize a judge to whom application is made to order a judicial inquiry, if in his opinion the interests of public justice require it, to ascertain whether a candidate for United States senator expended in order to secure election sufficient money in excess of the amount allowed in the statute to influence materially the result of the election. The judge is further required to send his decision in the matter and the evidence supporting it to the governor of the state, who is directed to transmit it in turn to the proper authorities of the United States government for such action as they see fit to take. The law was held to violate the clause of the state constitution providing for the separation of powers, since it confers upon the judicial department a power which is in essence discretionary and legislative. It is optional with the legislature whether or not it will enact a law embodying a policy in behalf of the public interest; but when such a statute is enacted "its enforcement is not optional when the circumstances demand its execution by the tribunal to which its enforcement is committed." The statute is further open to attack on the ground that it attempts to intrude upon the constitutional authority of the United States senate to act as the judge of the election and qualifications of its members.

Eminent Domain—Compensation. Police Jury v. Martin. (Louisiana. February 12, 1917. 74 So. 170.) A statute provided that when private property was taken by right of eminent domain for the construction of a state highway the measure of damages to the owner should be double the assessed value of the property per acre appearing on the last assessment roll. This was held to be a violation of the constitutional provision requiring the payment of just and adequate compensation for property taken by right of eminent domain. It was held that the legislature cannot fix the amount of such compensation nor adopt an arbitrary standard for the measure of it. It must be left to the courts to determine the amount of compensation from the facts in each individual case.

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Intoxicating Liquors—Amount Possessed Restricted. Delaney v. Plunkett. (Georgia. February 24, 1917. 91 S. E. 561.) It is a legitimate exercise of the police power of the state to forbid the keeping of intoxicating liquors in any place of business or public place and also to forbid the keeping of such liquors in excess of given quantities in any place whatsoever. In justifying this regulation of the possession of liquors for personal use the court declared that "it was a question for the legislature to settle, in view of the common knowledge as to the effect of even partial intoxication of an individual man or woman upon their conduct while in that condition, whether or not the prevention of consumption by an individual, in his residence or in a private place, did not bear a logical relation to laws intended to conserve the morals and guarantee the safety of the public." There is no denial of due process of law by seizing liquor kept in contravention of the law without affording the owner a hearing before a judicial tribunal. This is due to the fact that the law forbids the possession of the liquor thus seized; there can be no property right in it; and consequently no constitutional right can be impaired by a denial of the right to be heard.

Master and Servant—Letter of Dismissal—Employer's Blacklist. Cheek v. Prudential Insurance Company. (Missouri. February 20, 1917. 192 S. W. 387.) It is permissible for a state to enact a law requiring the superintendent or manager of a corporation to give to every employee who has been in its service for ninety days and shall request it a letter of dismissal upon his leaving the services of the corporation setting forth the service rendered and the cause of leaving. Such a statute is not unduly discriminatory inasmuch as it applies alike to all corporations. It is a wise and legitimate exercise of the police power. It is illegal for corporations to enter into an agreement not to employ within two years any person who leaves the service of any such corporation or who is discharged by it. While such an agreement is not prohibited by the anti-trust law of the state it is unlawful on the ground that it deprives the parties to the agreement of their freedom to employ whomsoever they wish and also takes from the employee thus blacklisted his legal right to follow his chosen occupation.

Militia—Payment by State When Drafted into Federal Service. State v. Handlin. (South Dakota. April 12, 1917. 162 N. W. 379.) The legislature appropriated money for the payment of $75 to every mem-

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ber of the state militia after their return from federal service on the Mexican border. The constitution of South Dakota forbids the granting of extra compensation to any public officer, employee, agent, or contractor after the services shall have been rendered or the contract entered into, provided however, that the legislature may make appropriations for expenditures incurred in supressing insurrection or repelling invasion. It was urged against the constitutionality of the above payments that since the militia of the state had been drafted into the service of the United States its services were rendered to the United States and not to the state of South Dakota. It was further contended that there was no insurrection, invasion, or state of war within the limits of the state and South Dakota was not liable for the payment of services rendered in repelling an invasion of the state of Texas. The court rejected these views. A militiaman is at all times a servant of the nation and the state. "At all times since enlistment, including the time they were on the Mexican border under the draft, this regiment has been, in a certain sense, the National Guard of the state of South Dakota. . . . The services performed while under the draft were public and rendered, in part, for the benefit of this state as one of the states of the nation." It makes no difference, furthermore, where the insurrection or invasion occurs. "Any assault upon the government of the United States by insurrection or invasion is also an assault against each and every state government in the union and it is equally the duty of the state to assist in repelling such assaults."

Muncipal Corporations—Commission Form of Government—Creation of New Department by Initiative. Buchl v. Board of Commissioners of City of Beverly. (New Jersey. February 27, 1917. 100 Atl. 328.) It is impossible to employ the initiative provisions of the act establishing the commission form of municipal government for the enactment of an ordinance creating an excise board entirely separate from the governing commission. There is no question but that the power to create such a board formerly belonged to the city and that the commission government act by its language seems to confer such power upon the new government. In spite of this, however, it was the judgment of the court that the legislature did not intend by the provisions for the initiative in the act providing for commission government to make it possible to change fundamentally that form of government in such a way that power now concentrated in one governing commission would be distributed again among additional boards. Any other view would permit the gradual disintegration of commission government.

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Municipal Corporations—Constitutionality of City Manager Plan. State v. Bentley. (Kansas, April 7, 1917. 164 P. 290.) A statute of February, 1917, permitted cities to adopt as an optional form of government the city manager plan. The validity of this act was attacked upon a large number of grounds. It was alleged that the provision permitting the governing board or commission to employ a manager and fix his salary without restriction as to the amount violates the clause of the state constitution requiring the financial powers of cities to be so restricted as to prevent abuse. This view was repudiated by the court inasmuch as the legislature did not deem any special restriction necessary to prevent an abuse of power in fixing the salary of the manager. It was further held that adequate restrictions upon the financial powers of the city are found in the budget provisions of the city manager plan. The fact that certain provisions of the new charter do not conform to the general laws of the state regarding elections and civil service does not invalidate it since the legislature always has the power by the adoption of a later act to suspend the operation of an earlier one where the two are in conflict.

Old Age Pensions—Constitutionality. In re Opinion of The Justices. (New Hampshire. February 15, 1917. 100 Atl. 49.) In response to a request by the house of representatives of the state the supreme court of New Hampshire announced its opinion that a law providing for the payment of old age pensions would be unconstitutional. That clause of the bill of rights of the state constitution which stipulates that "no pension shall be granted but in consideration of actual services" effectually precludes the payment of pensions the right to which would depend upon old age alone. Since the legislature cannot delegate a power which it does not possess it may not authorize the granting of such pensions by cities or other political subdivisions of the state. Even if old age pensions were not unconstitutional under the constitutional provision mentioned the further restriction of the bill of rights that no pensions should be granted for more than one year at a time would preclude the granting of pensions for several consecutive years by separate bills passed at the same legislative session, since the restriction mentioned must be construed to mean that a pension may not be renewed until the expiration of a year.

Physicians—Licensing and Qualifications. State v. Bonham. (Washington. December 5, 1916. 161 P. 377.) The provision that appli-

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cants for licenses to practice medicine must be graduates of a medical school whose requirements are not less than those prescribed by the Association of American Colleges, does not grant legislative functions to that association. Such provision in effect merely defines the medical schools from which the applicants must produce diplomas before licensing certificates may be issued to them. It is within the power of the legislature to impose such a restriction; the question of the wisdom or unwisdom is one for the legislature and not for the courts.

Physicians—Right to Practice Medicine. State v. Hefferman. (Rhode Island. March 2, 1917. 100 Atl. 55.) A state law limiting the right to practice medicine in the state to such persons as present satisfactory evidence of graduation from a medical school of good standing does not violate the fourteenth amendment of the Constitution of the United States as a deprivation of property without due process of law, or a denial of the equal protection of the law. While opinions still differ as to the best methods of treating disease the vast amount of scientific information regarding the human body and methods of medical treatment accumulated by the medical profession during many years renders the defendant's allegation that he has discovered an entirely new system of healing unknown to any medical school so improbable tht the denial to him of the right to practice healing on the ground that he is not the graduate of any medical school does not impair any constitutional right.

Police power—Constitutionality of Pure Seed Law. State v. McKay. (Tennessee. March 10, 1917. 193 S. W. 99.) In order to prevent the sale of impure and worthless seed it was provided by law that all seeds sold in the state must conform to the standards of purity set forth in the statute, and that accurate information regarding the purity and character of its contents must be marked on the outside of packages containing seed. The law does not apply to farmers who grow, sell and deliver seed on their own premises to purchasers for their own use. Such exemption of farmers from the operation of the law does not render it void as arbitrary class legislation since it is permissible for the legislature to impose upon sales made in the open market regulations which do not apply, and which could not appropriately apply, to the type of transactions mentioned above. Nor is it the intention or result of the statute to discriminate against seeds from other states. The requirement that the locality in which the seed was produced be indicated on the label is not arbitrary and unreasonable.

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Police Power—Constitutionality of Regulation of Billboards. Thomas Cusack Company v. City of Chicago. (United States. January 15, 1917. 37 Sup. Ct. Rep. 190.) This decision sustains as a valid exercise of the police power the ordinance of the city of Chicago forbidding the erection of any billboard more than twelve square feet in area in any block in which one-half the buildings are used exclusively for residence purposes without first obtaining the consent in writing of the owners of one-half of the frontage in such block. This affirms the decision of the supreme court of Illinois in the case of Thomas Cusack Company v. City of Chicago. (1915. 267 Ill. 344, 108 N. E. 340.) The view of the state court is without discussion that it is reasonable to impose such a limitation upon billboards in residence districts inasmuch as they create a fire danger, gather unsanitary and offensive accumulations, and shelter immorality and crime. The contention that the provision of the ordinance making the right to erect the billboard contingent upon the consent of certain of the property owners in the block is an unconstitutional delegation of legislative power is termed "palpably frivolous." Such a provision works to the advantage of the plaintiff since without it the prohibition of the ordinance would be absolute. "He who is not injured by the operation of a law or ordinance cannot be said to be deprived by it of either constitutional right or of property." There is ample precedent for the provision requiring the consent of such property owners. The ordinance in this case is distinguished from the one declared unconstitutional in the case of Eubank v. Richmond (226 U. S. 137), since that ordinance, by providing that a building line could be imposed upon the petition of two-thirds of the lot owners in a block, did involve a delegation of legislative power, while in the Chicago ordinance the restriction was effective unless suspended by the property owners, "a familiar provision affecting the enforcement of laws and ordinances."

Rural Credits Law—Limitation on Debt. In re Opinions of The Justices. (South Dakota. April 12, 1917. 162 N. W. 536.) In answer to questions propounded by the governor of the state the court declared that the liabilities incurred by the state in the operation of its rural credits law do not constitute debts within the meaning of the constitutional limitation on state indebtedness. "The word 'debt,' as used in such constitutional provisions, does not include any pecuniary obligation imposed by contract which, within the lawful and reasonable contemplation of the parties thereto, is to be satisfied out of

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the current revenues for the year, or out of some fund then within the immediate control of the corporation." "If the law contemplates that the liability shall be met and cared for in a manner other than by general taxation, the mere possibility that a contingency may arise under which such liability or a part thereof shall need to be met through a general tax . . . . is not enough to invalidate the law." "Such a contingent debt is not a 'debt' under the provisions of our constitution."

Women as Notaries Public. In re Opinion of The Justices. (New Hampshire. February 27, 1917 99 Atl. 999.) It is constitutional for the legislature to provide by law for the appointment of women to the office of notary public. In a previous opinion the court had declared that the governor of the state was without authority to appoint women to this office inasmuch as the common law forbade the holding of public office by women. This common law rule may be abrogated, however, by an act of the legislature, since the office of notary public is not mentioned in the state constitution and that instrument provides that the general court shall "provide by fixed laws for the naming and settling of all civil officers within this state, such officers excepted the election and appointment of whom are hereafter in this form of government otherwise provided for."

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NEWS AND NOTES

EDITED BY FREDERIC A. OGG

University of Wisconsin

The General Index to Volumes 1 to 10 (1906–1916) of the American Political Science Review and to the ten volumes of *Proceedings* of the American Political Science Association (1904–1913) is now printed and ready for distribution. This is a comprehensive subject and author index, including articles, notes, and book reviews, with cross references, making a pamphlet of about 120 pages of the same size and style as the REVIEW. It will be sold for $1.00 per copy. Orders should be sent to Prof. Chester Lloyd Jones, Secretary-Treasurer, Madison, Wis.

Prof. J. M. Mathews of the University of Illinois presented a paper on "State Library Administration" at the annual meeting of the National Association of State Libraries held in June at Louisville, Kentucky.

Prof. Francis W. Coker of Ohio State University has been appointed visiting professor at Yale University for the academic year 1917–1918, to take charge of Prof. Allen Johnson's courses during the latter's absence on sabbatical leave.

Prof. Karl F. Geiser of Oberlin College and Dr. W. F. McCaleb of the New York Bureau of Municipal Research are giving courses in political science in the summer session of Columbia University.

Courses in political science are given in the summer session of Harvard University by Professors A. N. Holcombe, G. G. Wilson, and G. C. Whipple. Prof. Philip M. Brown of Princeton University conducts a course in international law.

Prof. A. N. Holcombe of Harvard has received leave of absence for next year in order to assist in organizing the new federal bureau of efficiency at Washington.

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Dr. Edwin A. Cottrell of Wellesley College has been appointed professor of political science at Ohio State University and will organize a bureau of research at that institution. Professor Cottrell's successor at Wellesley is Miss Alice M. Holden, who has been instructor in political science at Vassar College.

Courses in political science are given at the summer session of the University of Illinois by E. D. Dickinson of Dartmouth College and R. E. Cushman.

The Morton D. Hull prize in municipal government for 1916 has been awarded to Edward C. Mabie, graduate student at Dartmouth College, for an essay entitled "A Study of Municipal Accounting and Indebtedness in New Hampshire."

Summer courses in political science at the University of Wisconsin are given by Professors Chester Lloyd Jones and A. B. Hall, and Dr. W. S. Carpenter.

Dr. Frederick A. Cleveland has resigned as director of the New York Bureau of Municipal Research to take a business position in Boston. He will continue to give the bureau counsel on technical matters.

Mr. W. K. Dingledine has been appointed instructor in political science at the University of Virginia, and Mr. Francis S. Harmon has been appointed Phelps-Stokes fellow for the study of the negro.

Courses in international law and relations are given in the summer session of the University of Virginia by Prof. Lindsay Rogers.

Members of the departments of political science and economics of the University of Oregon and the Oregon Agricultural College will act with the committee on consolidation of state offices, boards, and commissions appointed by the governor of Oregon under authority conferred at the late session of the legislature.

A bureau of municipal research has been established at Amherst College under the general direction of Raymond G. Gettell, professor of political science. Mr. William G. Avirett, who has been appointed instructor in political science, will devote his time for the present to the organization of the bureau.

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Prof. W. W. Willoughby, who has been in Peking during the last year as legal adviser to the Chinese government, has completed his term of office, and left China June 2. He will resume his duties at Johns Hopkins University in the autumn. During his absence Prof. J. H. Latané exercised general supervision over the department of political science and conducted the work of the seminary, while President Goodnow had charge of the work in constitutional law.

Dr. A. C. Millspaugh, who received the degree of Doctor of Philosophy from Johns Hopkins University in 1916, and who during the past year has been professor of political science in Whitman College, Walla Walla, Washington, has been appointed associate in political science at Johns Hopkins University. He will give an undergraduate course in political science and graduate courses in international law and municipal government. Dr. Millspaugh's dissertation, "Party Organization and Machinery in Michigan since 1890," has just been issued by the Johns Hopkins Press.

The degree of Doctor of Philosophy was conferred by Johns Hopkins University in June upon two men in political science, Malcolm H. Lauchheimer, whose dissertation is entitled "The Labor Law of Maryland," and Roger Howell, whose dissertation is on "The Privileges and Immunities of State Citizenship."

David P. Barrows, dean of the faculties and professor of political science at the University of California, has been granted leave of absence to enter the training camp of the officers' reserve corps, in which he holds a commission as major of cavalry. His place as head of the department will be taken by Prof. Edward Elliott, professor of international law and politics. Ludwik Ehrlich, D. Jur., of Oxford University, who has been at California since January, will continue as lecturer in political science, offering courses in the history of European political institutions and the administrative law of modern European states. Dr. J. R. Douglas, instructor in political science, will give courses in municipal government and administration.

Thomas H. Reed, associate professor of government in the University of California, has been granted another year's leave of absence from the university to continue his work at San José, California, as city manager.

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The courses given at the University of California summer session this year were: international law, by Prof. Edward Elliott; the government of cities, by Prof. Edgar Dawson, of Hunter College of the city of New York, who also gave a course on six problems of self-government; and three lectures on government by Leon Dupriez, J.D., professor of law, University of Louvain, and visiting lecturer on government, Harvard University.

The New Jersey state league of municipalities, organized in 1915, has established a bureau of municipal information in coöperation with Princeton University. The bureau has quarters in the university library, where the municipal material of the library is segregated. The bureau serves the departments of politics and economics as a practical laboratory in the field of social phenomena, where students of these departments may work out assignments under the guidance of the director of the bureau. A number of faculty members act as counsellors in the work of the bureau, and give advice upon questions falling in their respective fields. The bureau publishes a monthly periodical, entitled "New Jersey Municipalities," which is devoted to efficiency and progress in municipal administration.

The New Jersey commission appointed by Governor Fielder to revise and codify the statutes of the state relating to cities and other municipalities has submitted a 354 page report, which recommends the repeal of more than one thousand statutes. It also proposed a bill, which was introduced on January 27, 1917, as Senate Bill No. 7, extending numerous powers to all municipalities of the state. These powers include the right to own and operate wharves, docks, abattoirs, markets, street railways, heating plants, coal yards, ice plants, etc.

At the request of Mayor Rockwood of Cambridge, Harvard University helped to arrange a short series of conferences on police administration for the benefit of the Cambridge police force. Officers from various other New England cities and towns were invited, and about fifteen of them sent representatives. The instruction was divided into two parts; the first, under the direction of Mr. Raymond B. Fosdick of New York City, was for officers only; while the second, under Inspector Cahalane of the New York Police School, dealt with the ordinary duties of patrolmen. The various officers felt that the course had been a marked success and as a result of it Commissioner Woods of New

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York City is considering a plan whereby a somewhat similar course may be offered by his training school to which officers from all over the country may be admitted.

At the annual meeting of the Illinois State Bar Association, held at Danville in June, several papers and addresses were presented on proposed changes in the state constitution. Among the speakers were Professors Ernst Freund, C. E. Merriam, W. F. Dodd, George H. Mead and Dr. F. D. Bramhall of the University of Chicago; and Dean H. W. Ballantine and Professors O. A. Harker, James W. Garner and John A. Fairlie of the University of Illinois.

An Ohio Academy of Social Sciences was organized at Columbus during the Easter recess, while the Ohio College Association was in session. The meeting for organization was participated in by professors and instructors in economics, political science, and sociology in Ohio colleges and universities, together with state officials, representatives of municipal research bureaus, and other persons interested in social and political questions. The purposes of the academy are stated to be (1) to stimulate an intelligent public opinion on social and political conditions and problems; (2) to promote the study of social and political problems which are of direct concern to the people of Ohio; (3) to hold annual meetings, and in other ways to foster mutual acquaintance and coöperation among persons interested in such studies; (4) to stimulate the teaching of the social sciences in Ohio colleges and high schools, and to promote standardization of courses where standardization is desirable. A board of five directors has been elected to carry on the work of the organization during the first year, and to submit a draft of a constitution at the annual meeting in the spring of 1918. The board consists of Professors M. B. Hammond of Ohio State University, A. R. Hatton of Western Reserve University, S. G. Lowrie of the University of Cincinnati, T. L. Harris of Miami University, and Mr. Gardner Lattimer of the Toledo Commerce Club.

The twenty-first annual meeting of the American Academy of Political and Social Science was held at Philadelphia April 20–21. The general topic under consideration was America's relation to the world conflict and to the coming peace. Among session topics were America's obligation as the defender of international rights, the elements of a just and durable peace, the problems of a durable peace, the rights of

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small nations, and America's participation in a league for the maintenance of a just and durable peace. Persons who took part in the proceedings included Vice-president Marshall, Hon. Geo W. Wickersham, Hon. Henry L. Stimson, Rear-admiral Robert E. Peary, Hon. Oscar S. Straus, Hon. John Sharp Williams, and Professors Franklin H. Giddings, John H. Latané, Philip M. Brown, Ellery C. Stowell, and Samuel T. Dutton. Many national and local organizations appointed delegates, and the sessions were unusually well attended.

A national conference on foreign relations of the United States was held at Long Beach, Long Island, May 28 to June 1, under the auspices of the Academy of Political Science in the City of New York. Subjects discussed included the need of better machinery for international negotiations, the attitude of the United States toward world organization, the democratic ideal in international relations, the United States and the Caribbean, the drawing together of the Americas, national policy as to resident aliens, newer American conceptions of international relationship, and the United States and the Far East. The addresses and discussions have been published in a volume of the Proceedings of the Academy.

Electoral Reform in the United Kingdom. In introducing the franchise bill to the house of commons on May 15, Mr. Walter Long, secretary for the colonies in the Lloyd George administration, was careful to state that the bill was not a government measure. It is the fourth reform bill since 1830, and the only bill dealing with the franchise that can be described as an agreed bill—a measure to which the leaders of political parties had given their assent before it was submitted to parliament. The act of 1832, it will be recalled, was carried by a Whig administration against persistent opposition from the Conservatives. A Conservative administration carried the act of 1867 through parliament; but in the house of commons the Liberal opposition, headed by Gladstone, had a large part in moulding the form in which the bill went to the house of lords. The Gladstone government of 1880–1885 carried the act of 1884, but had to make terms with the opposition as to the order in which the franchise and redistribution bills were proceeded with. The new bill, forced on parliament and the government by electoral exigencies growing out of the war, is based on resolutions adopted at a conference presided over by the speaker, Right Hon. J. W. Lowther, in which representatives of all parties in

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the house of commons took part. The whole procedure preliminary to the bill was new in British parliamentary history. Its only parallel would seem to be the procedure adopted at Ottawa since 1903, when the decennial redistribution bill is before the house of commons. There in accordance with a praiseworthy innovation introduced by Sir Wilfrid Laurier when he was premier from 1896 to 1911, the redistribution bill is read a first time and then referred for settlement of boundaries of constituencies to a special committee whose members are nominated by both political parties.

"This," said Mr. Long, when under the ten minute rule he introduced the bill of May 15, "is not a government bill, but the result of a conference at which all parties and all sections in this house were represented. In its preparation the same rule has been followed, inasmuch as the government committee which is responsible for turning the recommendations of the conference into the form of a bill was composed of men representing many shades of political opinion." "It deals," added Mr. Long (who introduced the bill in the absence, through illness, of Sir George Cave, the home secretary), "with all the recommendations of the conference—franchise, registration, the conduct and cost of elections, redistribution and other questions."

English newspapers to hand up to the day when this note was written—June 5, 1917—contained reports only of the brief debate at first reading stage on May 15, and summaries of the bill. By cable there has been news that at second reading the bill was carried by a large majority,—not more than forty members, nearly all of them Conservatives, voting for the motion to reject on the ground that wartime was not an appropriate season for an extensive readjustment of the electoral system.

The bill as introduced can well be described as a sweeping measure, more radical and more comprehensive than the act of 1867 or 1884–85. In commenting on the simplification of the electoral code that will result from the bill, Mr. Long told the house that the bill repealed no fewer than thirty-one statutes dealing with the representative system, and partly repealed thirty-two more, also concerned with the representation. "And the whole law," he added, "is brought into the bill which contains a little more than thirty clauses, with schedules. There were reports that we were shortening the bill by handing over everything to be done by orders-in-council. There is no foundation for that statement. Everything is within the four corners of the bill, either in the clauses or in the schedules."

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Only students of the representative system in England can adequately realize the full meaning of Mr. Long's statement that the electoral code is to be embodied in an act of not more than thirty sections. Since Englishmen first went to the polls to vote for members of the house of commons there never was, until this bill of 1917 was introduced, even an attempt to embody all the electoral laws in a single act of parliament. As regards actual changes in the representative system, the most radical and far-reaching is the admission of women to the franchise. "We include the enfranchisment of women," says Mr. Long, "on the lines indicated in Mr. Speaker's conference by a large majority. We fix the age at which women shall be qualified to vote at thirty." Another radical change is the abolition of the plural voter. Heretofore there were men who from their ownership of freeholds exercised at a general election as many as fifteen or twenty, or even more, votes. Under the bill it will not be possible for any elector to cast more than two votes. These votes will be based on occupation as distinct from possession, which was the only qualification of the great majority of plural voters under the representative system as it had developed from the sixteenth century to the reform act of 1884–85. The great increase in the electorate under the new bill will come from (1) the inclusion of about 6,000,000 women, and (2) the shortening of the qualifying period from a year to six months, and the simplification of registration procedure provided for in the bill. Another quite noteworthy provision is that all elections shall take place on the same day. There are also clauses determining the conditions under which absentees may record their votes.

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French War Cabinets. French ministries have been "reorganized" on four different occasions since the outbreak of the European war: August, 1914, October, 1915, December, 1916, and March, 1917. The beginning of the war found in power a ministry which had been formed by M. Viviani in the preceding month of June. Some three weeks after the outbreak of the war (August 26), M. Viviani having reached the conclusion that it was desirable to "broaden the basis" of the ministry to enable it to handle more effectively the heavy and difficult problems raised by the war, placed the resignations of himself and his colleagues in the hands of the president and urged him to appoint a ministry of "national defense." The resignations were accepted and M. Viviani himself was requested by the president to form a new

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ministry on the basis suggested. Owing to the increased duties which the war imposed upon the premier (the president of the council, as he is called in France), M. Viviani introduced the innovation of taking the premiership without portfolio. With a view to attracting the support of the anti-military socialists he called into the ministry two representatives of this group, Marcel Sembat and Jules Guesde the latter well-known for his socialist orthodoxy and his extreme anti-militaristic views. M. Guesde, like the premier, became a minister without portfolio. The appointment of two ministers without portfolio marked the revival of a practice which had not been followed in France since the Second Empire. The dissociation of the presidency of the council from an office seems to be entirely without precedent in France. Another feature of the Viviani ministry was an unusually large number of under-secretaries of state—eight altogether—four of whom were attached to the ministry of war. This practice has been common in France in recent years although the number of under-secretaries attached to any cabinet has rarely exceeded two or three. The ministry as thus constituted was composed of fourteen members (not counting the under-secretaries[1]) as against twelve, the number in the preceding cabinet.

The chamber of deputies promptly accorded the new ministry a practically unanimous vote of confidence; but before many months had passed this confidence was shaken by the unfortunate events in the Balkans, notably the outcome of the Dardanelles expedition and the failure of British and French diplomacy to win over to the side of the Allies Greece, Bulgaria and Rumania. Delcassé, minister of foreign affairs, and Millerand, minister of war, in particular became objects of attack, and on October 13 Delcassé resigned. Viviani eloquently defended the ministry from attack and warned the chamber that it was undertaking "a heavy responsibility in overthrowing the government in the face of the enemy," and told them that if the ministry were condemned their successors would be obliged

[1] The question as to whether under-secretaries of state are a part of the ministry to which they are attached is discussed by Duguit, *Droit Constitutionnel*, vol. II, pp. 494–495. Until 1906 they never attended the meetings of the council of ministers but in that year the ministry decided that henceforth they should attend. Apparently they have only a consultative voice in the deliberations. Constitutionally they are not responsible to the chambers, but Duguit remarks that those who have been vested by decree with determinate functions are in fact responsible. In practice they alway tender their resignations whenever the ministry to which they are attached resigns.

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to bring about an immediate victory under penalty of being overthrown in their turn—an achievement which no ministry could guarantee. There was, however, considerable feeling that the basis of the existing ministry was not sufficiently broad and that a coalition government composed of the representatives of a larger number of political groups whose support it was desirable to attract would possess greater elements of strength. In consequence of this growing disaffection the size of the votes of confidence continued to dwindle, and finally when 150 deputies abstained from voting on an order of the day involving a question of confidence the ministry resigned (October 29, 1915), although it still had a very substantial majority in the chamber.

M. Briand, who had already been president of the council four times during the preceding six years, was charged with forming a new ministry. M. Briand did not follow the innovation of M. Viviani but himself took the portfolio of foreign affairs, although in fact the chief burden of the office was devolved upon M. Jules Cambon, who was appointed to the position of secretary-general of the ministry of foreign affairs. Six under-secretaries of state were attached to the ministry and five *ministres d'état* without portfolios were added. The latter were: the aged Senator Freycinet, a moderate Republican, who had already served in thirteen ministries, in four of which he had been the chief; the extreme radical Dr. Combes, a former premier, violently hated by the clerical party for the severity with which he had enforced the law against the congregations; Léon Bourgeois, a radical socialist statesman of distinguished ability; Jules Guesde, the most orthodox of socialists; and Denys Cochin, a representative of the ultra clerical and reactionary party. On account of the criticism which had been directed against Millerand, he was left out of the new cabinet and to the alarm of some ultra civilians the ministry of war was assigned to a distinguished soldier, General Gallieni, military governor of Paris. General Gallieni died in March, 1916, and was succeeded by General Roques. Admiral Lacaze was appointed minister of marine. While it has been the general practice in recent years to place civilians at the head of the ministries of war and marine, it has by no means been invariable; and in a goodly number of instances these posts have been occupied by military and naval men. The ministry as thus constituted was composed of 23 members, counting the under-secretaries, the largest in size ever known in France, at least since the establishment of the Third Republic. It was preëminently a coalition ministry of widely diverse political views, being made up of representatives of the unified

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socialist party, the independent socialists, radicals and socialist radicals, moderate republicans, progressives and reactionaries (the Right). The ministry contained six former premiers and altogether ranked considerably above the average in ability.

The chamber promptly accorded its confidence by a vote of 515 to 1 (100 of the 602 deputies were absent, having joined the colors); but signs of disaffection presently began to appear, the number of interpellations increased and the size of the votes of confidence grew smaller and smaller. There was especial dissatisfaction with the results at the front and a strong demand grew up for the reorganization of the High Command and the adoption of more energetic measures to achieve a victory for which the country was becoming more and more impatient. There was also considerable feeling that the ministry was too large and unwieldy and that the responsibility for the maintenance of the national defense was too widely distributed. On December 7, the chamber adopted an order of the day expressing its confidence in the government, but there was a considerable negative vote (360 to 141). The resolution of confidence also declared in favor of a reorganization of the High Command and the concentration of the direction of the war in a smaller body, following the recent action of the English government.

After this vote the ministry resigned and a new one with Briand as chief was constituted. In fact, what took place was a reorganization of the existing ministry and a reduction of its size. Admiral Lacaze was retained as the head of the ministry of marine and General Lyautey resident general of Morocco and a soldier with a distinguished record in Africa, became minister of war. In order to reduce the unwieldy size of the ministry, the portfolios of justice, public instruction and labor were consolidated and placed in the hands of M. Viviani. Likewise the ministries of commerce, industry and agriculture were consolidated. On the other hand, in consequence of the increased importance of the food supply, transportation and munitions, those services were organized into separate departments, at the head of each of which was placed a minister or a technical director. Three under-secretaries of state were retained but the five ministers of state (without portfolio) whom Viviani had attached to his cabinet were omitted. Provision was made for a "war committee" composed of the prime minister and the ministers of war, marine, finance and munitions, to which was added the president of the republic. With a view to coördinating the work of national defense the minister of war was required to notify

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the other members of the committee, and also the commanding generals, of its decisions and to take measures to secure their concerted execution. The committee was to have a large power of direction and was made responsible for the preparation and maintenance of the nation's resources. The High Command was reorganized by the removal of Joffre and the appointment of General Nivelle as commander-in-chief of the armies of the north and the northeast. At the same time the rank of marshal was revived and conferred upon Joffre, who became technical advisor to the war committee.

This ministry was destined to be the shortest lived of any of the French war cabinets. Its economic policy became the object of especial attack and on March 17, 1917, three months after it came into power, it resigned. General Lyautey's resignation, in fact, preceded by several weeks those of his colleagues although he had not been the object of special attack, his resignation being due, it is said, to his ignorance of parliamentary procedure. The minister of finance, the venerable Senator Ribot, who had already served as premier of four ministries, was charged with the organization of a new ministry, and the rapidity with which he accomplished the task broke all records, the new ministry having been constituted within the brief period of forty-eight hours—this, notwithstanding the fact that the task was not an easy one, as a goodly number of persons to whom portfolios were tendered refused to accept them, while others after having accepted subsequently withdrew. Briand was asked to remain in the cabinet as minister of foreign affairs but he declined on the ground that having dealt with the Allies in the dual capacity of premier and foreign minister he would be unable to exercise the same influence in the latter capacity only. Moreover, in consequence of the hostility manifested toward him by certain groups in the chamber he felt that his presence in the new cabinet would be a source of weakness rather than of strength. Senator Ribot thereupon took the portfolio of foreign affairs. Admiral Lacaze was retained as minister of marine but in view of some criticism of the policy of placing military men in charge of the war department a civilian was now appointed head of the ministry of war. The new appointee was Prof. Paul Painlevé, who had recently been minister of public instruction and inventions. Viviani, Bourgeois and Albert Thomas were taken over from the old ministry. The under-secretaryships of the previous ministry were continued but no ministers *sans portefeuille* were appointed. The Ribot government has proved to be a rather strong and popular one and its tenure already exceeds the average duration of French ministries.

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Four ministries in less than three years will of course be regarded by critics of the French parliamentary system as further evidence of its weakness and instability; but those who so regard it overlook the fact that in no case has a ministry since the outbreak of the war been forced by the parliament to resign. In every case the outgoing ministry had the confidence of a substantial majority of the chamber of deputies and its resignation was entirely voluntary. Moreover, in no case did the government actually pass from one political party to another; each new ministry was in fact a reorganization of the preceding ministry, and in several cases something like half the members of the new ministry were taken over from the retiring ministry. The result in each case was not the overthrow of the existing government but rather the strengthening of it by adding statesmen who were believed to be better qualified to perform the heavy and difficult tasks imposed by the war; by the introduction of leaders of important groups whose support it was desirable to attract; or by reducing the size of the ministry and concentrating the direction of the war in fewer hands, so as to insure greater vigor and energy. This was in line with the policy pursued in England and there was nothing which indicated chronic weakness or instability in the French parliamentary system.

JAMES W. GARNER.

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BOOK REVIEWS

EDITED BY W. B. MUNRO

Harvard University

The Military Unpreparedness of the United States. By FREDERICK LOUIS HUIDEKOPER. (New York: The Macmillan Company. 1915. Pp. xx, 735.)

On the title page of his book the author reminds us that he is the founder of the "Army League of the United States" and is a member of the "Military Service Institute." In the preface he states that before the outbreak of the European war he had spent nearly nine years in arousing the American public to the need of greater national defense, and in that connection explains his purpose in writing the book as follows: "It had at last become apparent that there existed a need for a military history of the United States which gave the unvarnished truth, doubly so since our historians have painted in glowing colors the successes of our former wars, but have suppressed with studied care the blunders which have characterized our military policy throughout the past."

The New York *Tribune* in reviewing the author's book on November 13, 1915, made this statement: "It is not pleasant to recall these things, but it should be salutary. The author of this volume has done so with a high, a humane, a holy purpose; and he has performed potentially one of the greatest services to the nation that lie within mortal power. His knowledge of the subject is encyclopedic; his logic is impregnable and irresistible; his facts are beyond controversy. There is scarcely a statement in the book for which he does not cite chapter and verse of indisputable authority."

In a preface to the book, General Leonard Wood also commends the author and his work and especially approves the author's condemnation of our school histories for their inadequate and misleading presentation of military affairs.

This is a high praise indeed, but is it deserved? Without questioning the claim that the author's purpose is a high, a humane and a holy one, nor even questioning for the present the correctness of the propo-

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sition that universal compulsory military service as advocated by Mr. Huidekoper is the best solution of our military problem, the accuracy of some statements made by him may be tested. On page 69 he quotes with approval a statement from Carrington to the effect that few of us realize that "the only decisive victory of the war of 1812 before the conclusion of the treaty of peace was at the battle of the Thames, where the force of the British regulars dispersed or captured numbered but little more than 800." In a paper before the American Political Science Association, the author asks: "In how many American histories or school books will you find the fact expressed in the above quotation set forth?" Admitting that nowhere in our texts on American history is the above remarkable statement made, the conclusion does not follow that such an omission convicts our text book writers of suppressing the truth, for Carrington's statement is obviously an exaggeration.

Mr. Huidekoper attempts to dim even the glory of Jackson at New Orleans where Wellington's veterans led by one of his best commanders, General Packenham, were defeated with a loss of over two thousand killed, including Packenham and four other generals, by a much smaller force with a loss of only seventy men. He makes much of the rout of Morgan and some Kentucky militia on the west side of the river, opposite the main battlefield, and comments on this as "facts which are carefully suppressed by our historians." While no individual historian or particular works are singled out in this or any other of his numerous blanket indictments, it is fair to presume that all are guilty. It is difficult to prove that no single historian is deserving of the charge, but it is easy to establish that a goodly number of them are not guilty. This list includes Schouler, Henry Adams, McMaster, Roosevelt, Hart, Babcock and Woodrow Wilson, every one consulted.

The author, commenting on our military policy during the Mexican war, makes this among many other statements (pages 86–87): "As many of the enlistments were on the eve of expiration, General Scott did not wish to expose these men needlessly to the deadly climate. On May 4 he was forced to part with seven out of his eleven volunteer regiments, amounting to four thousand men, who were dispatched to Vera Cruz where they were to be conveyed to New Orleans and discharged. As a result of the loss, coupled with the detachments necessary to guard the line of communication and a large number of sick, his army was reduced to five thousand eight hundred and twenty

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effective troops. In the midst of a hostile country and only three days' march from the capital, with virtually no enemy to oppose him, Scott found himself unable to budge for more than three months." In his paper the author also refers to this incident and adds: "These facts our historians and the writers of our school books have carefully suppressed. I could cite dozens of others to you, but the above will suffice."

With the last sentence one may agree, and marvel at the author's moderation in limiting himself to dozens. Such instances can be multiplied indefinitely when one once learns the method. As to the causes of General Scott's delay from early May to late in August in his advance on the capital of Mexico, Mr. Huidekoper's ready explanation is not convincing. He seems to be utterly wrong in attributing that delay solely to the expiration of the terms of enlistment of the troops. It is a wearisome task to work through all the evidence on this point, but on its face his charge looks doubtful. Consider the situation in the summer of 1847. There was a bitter opposition to the discreditable war with Mexico. President Polk was anxious to stop further bloodshed. Mr. Buchanan, the secretary of state, sent Mr. N. P. Trist, chief clerk of the state department, to Scott's headquarters with full authority to negotiate peace. Mr. Trist reached Vera Cruz May 6, and at once dispatched a communication from the secretary of war to General Scott, which notified the general that Mr. Trist was clothed with full power to arrange with the government for the suspension of hostilities and that when notified in writing by Trist that the time had come to suspend hostilities, he should regard that notice as a direction from the President to suspend them till further orders. The army was not to retire from positions then held except for safety or health or "unless a change of position should be necessary for the success of the negotiations." Of course Scott was furious that a civilian, and, what was worse, a subordinate in another department, should be given such powers to interfere with the commanding general in the field. Both rushed off angry letters to Washington. An entry in Polk's diary of June 12, 1847, records the significant fact that he would "remove Scott from chief command just as sure as he refused or delayed to obey the orders borne him by Mr. Trist." Later Scott and Trist forgot their differences. The futile peace negotiations between Trist and General Santa Anna dragged on until early in August, when, after the arrival of more troops referred to by Mr. Huidekoper, the army advanced on Mexico. Even after the way to the capital was open, the

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entry into the city was put off, as General Scott informs us in a letter to Marcy August 27, 1847, lest by "wantonly driving away the government and others, dishonored, we might scatter the elements of peace."

In view of such evidence, it is safe to draw the conclusion that if there exists a need for a military history of the United States which gives the unvarnished truth, Mr. Huidekoper has not supplied that need. If we were disposed to take his book seriously, we would be forced to one of two conclusions: either that it is a gross distortion of the facts and a libel on American scholarship, or else that American historians and educators have something to explain. Neither his book nor his paper can be regarded in any other light than campaign literature. He is an enthusiastic militarist and has exploited American history and American historians in the interest of his cause. His object never was to tell the whole truth, the real truth about our military past; but to make it appear that we do not possess and never have possessed an army worthy of the nation, that the military situation before our entrance into the war was desperate, and that the people must be aroused by every possible means to prepare lest we should be matched against the gigantic armies of one of the powers then at war with an army of pigmy dimensions. We may be disposed to extenuate a good deal if the author pursues "a high, a humane, a holy object;" but I doubt if we can condone a libel on the citizen army and the scholarship of the nation, be the cause ever so worthy. No man ought to allow his partisan zeal to run away with him to that extent.

However much we may object to the author's methods, no one will deny the momentous importance of the question he raises. It is no less than the adoption of universal compulsory military service for a nation of a hundred million people. The general staff of the United States army is committed to the project and has openly urged the adoption before the senate committee on military affairs and in the public press. This is the real question and should be discussed on its merits.

Should the condition of anarchy among nations be continued and the training of the huge military forces be kept up after the close of the world war, it seems evident that then a compulsory universal system of military service will prove to be the only democratic, fair and thoroughly effective policy to adopt. But it is probable that nothing short of an actual national catastrophe will ever drive this republic to the adoption of so drastic a measure, as a permanent policy.

But should some scheme of world organization be adopted by the nations at the close of the war, an entirely new situation will arise.

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Then the first change must be a reduction of the existing national armies and navies, and possibly the increase of some now entirely inadequate in order to equalize power and to distribute the burdens fairly.

Not until the peace conference has dealt with these matters can our permanent future military policy be intelligently formulated.

WILLIAM A. SCHAPER.

University of Minnesota.

American World Policies. By WALTER E. WEYL. (New York: The Macmillan Company. 1917.)

Mr. Weyl has written exactly the sort of book most needed at this crisis—a critical, dispassionate, patriotic study of the fundamental economic, political, and social factors of which American policy must take account and from which it must spring. His grasp of the complex elements of the situation is admirable; unlike too many so-called students he studies the United States in the light of international relationships, of European history as understood in Europe, instead of dealing with international complexities on the basis of a history of American diplomacy unconsciously founded upon the fiction of isolation.

The country stands, he holds, between two choices: nationalistic imperialism and internationalism. He seems to feel that the stronger economic forces now in existence are moving swiftly toward the former, while the ethical preferences of the vast majority of the people unquestionably favor the latter. Unless the present direction of our national growth can be checked and changed, he fears that the economic forces will conquer the idealistic and ethical impulse toward internationalism and launch us forth upon a period of nationalistic imperialism. He is in the truest sense a student of possibilities, a forecaster, not a prophet. His keen unsparing analysis of the premises of isolation and as well of the historical and diplomatic traditions which it has fathered, will hardly be relished by the numerous historians, lawyers and publicists who have cherished those views and who now find it difficult to abandon them. His logic for their renunciation is compelling and convincing.

Unfortunately, Mr. Weyl kept studiously in the background the possibility that the United States might enter the war; and his final chapter, "An Immediate Program," based upon the assumption that we should in all probability preserve our technical neutrality, will

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therefore rob the book for many of vital and immediate relation to the situation. Nor will the majority of those who profess internationalism altogether like his use of the word to connote rather a more extensive and reasonable relationship between existing nations than a radical change in the character of the entities themselves resulting from the surrender of a portion of their sovereignty to an international government. The fact that he is neither partisan nor advocate will disappoint others who like this mental pabulum hot. Some will feel that our policy of isolation was more nearly the product of ignorance and provincialism than of idealism; and that the connotation ought to have been avoided that the necessity of abandoning the theory of isolation involves the renunciation of an idealistic basis for an American foreign policy. But no rapid changes in the situation since the book was written nor in the future can rob it of real value and importance for every one who hopes to understand the position of the United States and to grasp intelligently the possibilities before us as a nation.

ROLAND G. USHER.

The Hague Arbitration Cases. By GEORGE GRAFTON WILSON. (Boston: Ginn and Company. 1915. Pp. x, 525.)

The Hague Court Reports. Published by the Carnegie Endowment for International Peace. Edited with an introduction by James Brown Scott. (New York: Oxford University Press. 1916. Pp. cxi, 664.)

These books fill a gap in the literature of international relations. Hitherto the records of the Permanent Court have been hidden away in foreign offices or in the libraries of a few specialists. It is valuable service, therefore, that Professor Wilson and the Carnegie Endowment render by making the Hague awards accessible for the first time to the general reader. Professor Wilson, presumably with the needs of the student of arbitration in mind, gives merely the compromise and the awards, leaving explanatory details for the lecture room. The endowment's volume supplements the official records with opinions, extracts from treaties and other material, and prefaces each award with a syllabus of the facts. Both editions give the original official texts, but Professor Wilson employs the more convenient arrangement of placing them parallel with the translations.

Apart from their juridical value, the Hague reports abound in variety and human interest. Recently some one has called attention to the

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field of romance latent in the cases which come before the privy council. But, within the limited range of a few arbitrations, the Permanent Court offers even more of the romantic than the British imperial tribunal. Let a Stevenson or a Kipling fall upon its records and he will find treasure to his liking. Mexican Indians, Arab, searovers, Hindoo seditionists, Newfoundland "captains courageous," French legionaries, are among the picturesque "sorts and conditions" whose personal fortunes have been affected by the Hague awards. The world-wide scope of the court and the worth of its work are thus summarized by Professor Wilson:

"France has been a party in six cases, Great Britain in five, the the United States in four, Germany and Italy in three each, and several states in two or only in one. Seventeen different states in all have been parties in cases before the Hague tribunal. These facts show an established confidence in the tribunal and in its personnel. It certainly has a worthy record in achievement, as shown by the number and the varied nature of the causes brought before it, by the wide geographical distribution of the states appearing as parties, and by the readiness with which all parties have accepted the tribunal's decision."

An examination of the personnel of the various tribunals suggests that there is gradually being developed a profession of international jurists. Of twenty-eight Hague arbitrators, twelve have sat on more than one case. Renault, of France, has been a member of five tribunals; Lammasch, of Austria, and Savornin Lohman, of the Netherlands, each of four. Were it not that the agreements to arbitrate usually call for one or more nationals, the tendency to choose the arbitrators from a few men of wide international experience would be more apparent. This will be of significance when a supreme court of the world comes to be instituted.

The issues before the Hague Court have covered a wide range of legal principles. Many of them, however, have proceeded not from normal and permanent international relations but from conditions which are, at best, anomalous and likely to pass away. Questions of servitudes, of protégéship, of exterritoriality, while of great temporary importance, are not of supreme value as contributions to a corpus of international jurisprudence. On the other hand, questions of extradition (as in the Savarkar case) or of neutral maritime rights (as in the Italian seizures) ought to be of importance in building up "case" law in the judicial sense of the word.

How far the Permanent Court has extended the province of arbi-

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tration as a means of settling international disputes is open to discussion. Of the fourteen Hague cases, five involved financial claims, two were boundary disputes, one a matter of extradition, three arose out of the relations which Western states maintain with communities of differing civilization, two were over seizures of neutral vessels in time of war, and one—the North Atlantic fisheries case—settled a diplomatic controversy extending over a century. With one exception, none could be said to involve "vital interests or national honor," and all would probably have been settled in time through arbitral means. The exception was the Casablanca affair, the tension of which undoubtedly was relieved by resort to the Permanent Court. But the award in this case was the least satisfactory of them all from the judicial point of view. Though two clear principles—consular jurisdiction and military occupation—were in conflict, the tribunal in a measure side-stepped the issue and made a diplomatic compromise. It is just here that the limitations of arbitration appear. Its chief object is to secure a settlement and hence its awards may not always embody strictly legal decisions. As often as not, a tribunal may be composed largely of persons in whom the diplomatic character is more prominent than the judicial, with the result, as Mr. Root points out, that "the arbitral tribunal simply substitutes itself for the negotiators of the two parties." The remedy would seem to be an international court of justice.

It has often been said that the Permanent Court at The Hague is neither permanent nor a court. But a tribunal such as that proposed at the Hague Conference in 1907 (the Court of Arbitral Justice) would be both and would possess that finality of decision, as between nations, which the Supreme Court at Washington exercises within the jurisdiction of the United States. This does not mean however, that the Hague Court would necessarily be superseded. As Dr. Scott indicates, "there will always be a field for the so-called Permanent Court of Arbitration and a truly permanent court of justice because nations may well prefer, in acute disputes where their policy is involved, to refer the controversy to arbitrators of their own choice in order to adjust conflicting interests rather than to submit differences of a political nature to a court of justice to be decided according to principles of law." But whatever postbellum institutions may be devised to get rid of the futility of war as a means of arbitrament, the Permanent Court will always be accorded a foremost place among the international phenomena of our time. To quote Dr. Scott again,

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"It is only fair to say that the machinery, however imperfect, devised by the First Hague Conference has nevertheless rendered inestimable services to the cause of arbitration by putting the stamp of approval of an international conference upon arbitration as a means of settling difficulties, and by turning the minds and the thoughts of nations in controversy to The Hague, where this temporary tribunal of a very special kind can be called into being for the settlement of their disputes which diplomacy has failed to adjust."

HENRY F. MUNRO.

Columbia University.

Breaches of Anglo-American Treaties. By MAJOR JOHN BIGELOW. (New York: Sturgis and Walton Company. 1917. Pp. xi, 248, with three maps.)

A curious, interesting, and, in some ways, a futile book. Futile, because of the purpose avowed by the author in the preface: "The following study is devoted to determining the relative trustworthiness of two great nations as indicated in their conventional intercourse." He has succeeded in showing that because of divergent interpretations of treaty provisions, of changed conditions, of extreme exigencies, both Great Britain and the United States have acted at times in such a way as to incur the accusation of bad faith. He has indicated that Great Britain has violated at least eight treaties, and the United States four treaties. He has tabulated "the injurious acts done, one to the other, in violation of international law" and finds British violations, expressed in terms of indemnities awarded, as amounting to $28,690,694, and American violations as amounting to $5,505,328.34.

Major Bigelow's general conclusions are to the effect that Great Britain has been less trustworthy than the United States with respect to treaty engagements, and that British diplomacy has far excelled American diplomacy.

As regards trustworthiness, it would seem futile to indulge in invidious generalizations. A liberal, charitable conclusion concerning breaches of Anglo-American treaties would seem to be that honest differences of opinion may easily arise respecting treaty obligations; that all treaties are made subject to the implied condition of *rebus sic stantibus*; and that every nation is bound to safeguard its vital interests from unanticipated injuries.

As regards diplomacy, it is true that the Clayton-Bulwer treaty, from the American point of view, has generally been considered as a

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decided triumph for Great Britain. But it should likewise be remembered that the treaty of Washington, from the British point of view, was a decided triumph for the United States. It virtually determined in advance the issue of the Geneva arbitration whereby England was compelled to pay the United States fifteen millions of dollars. In estimating diplomatic successes, it is more just to compare the results attained with the difficulties overcome than to judge the results by themselves. In this sense even the Clayton-Bulwer treaty need not be condemned as an absolute failure for American diplomacy.

The most instructive and entertaining portion of Major Bigelow's book is to be found in Chapters III, IV, and V, which deal with the Clayton-Bulwer treaty. He has included some interesting matter from the Clayton Papers in the Library of Congress throwing some new and disagreeable light on the personality of Sir Henry Bulwer. Evidence of duplicity on the latter's part towards his own government as well as towards Secretary Clayton is revealed, though little is adduced to alter the generally accepted estimate of the negotiations for the treaty bearing their names. It merely tends to confirm Blaine's judgment that the treaty had been "misunderstandingly entered into, imperfectly comprehended, contradictorily interpreted, and mutually vexatious."

For those who may not have familiarized themselves with the extraordinary rôle played by Great Britain as the "protector" of the Mosquito Indians and as the rival of the United States for the control of the interoceanic routes across Central America, Major Bigelow's brief study will be of interest and enjoyment. It would seem to reflect, however, the spirit of an enquiring mind, rather than the results of profound research.

PHILIP MARSHALL BROWN.

Princeton University.

The System of Financial Administration of Great Britain. By W. F. WILLOUGHBY, W. W. WILLOUGHBY AND SAMUEL McCUNE LINDSAY. Published for the Institute for Government Research. Introduction by A. Lawrence Lowell. (New York: D. Appelton and Company. 1917. Pp. xvi, 392.)

For nearly forty years England has been indebted to the early movement in the United States for civil service reform for the only detailed and comprehensive history of its civil service that it possesses. The

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much newer movement for the establishment of a budgetary system at Washington has now given Great Britain the fullest and most serviceable treatise on its financial system it as yet possesses. In thus characterizing the Willoughby-Willoughby-Lindsay report it may be said at once that the writer of this note is not overlooking Hilton Young's admirable, almost fascinating monograph on "The System of National Finance." But Young covers much more ground than Willoughby, Willoughby and Lindsay. He goes with much detail into the collection of the British revenue; and in his book there are also chapters on the floating and funded debts, on the sinking funds, and on the relations of the government with the Bank of England. The Willoughby-Willoughby-Lindsay study can scarcely have taken its authors in their field research out of sight of Big Ben. It is concerned only with the appropriation of money by parliament, and with the system that the house of commons has devised and perfected since the beginning of the nineteenth century—chiefly in the years from 1834 to 1866—for controlling the expenditure of money that has been voted for the various services of the state.

Several of the great spending services, such, for instance, as the army and the navy, necessarily come in for mention. References to these services are needed to illustrate the working of the system. So, obviously, are the chapters on the office of public works and the stationery office. But one hundred and fifty of the two hundred and eighty pages of text of the report are concerned only with (1) the house of commons and the budget; (2) the treasury, the general business manager and agent of parliament; (3) the comptroller and auditor-general, his functions and powers; and (4) the most important of the house of commons committees—the committee on public accounts, and the much newer committee on the estimates. Of these five institutions which are concerned in the administration of British finance, most attention is given to the treasury. The house of commons, acting in its capacity as the taxing and appropriation branch of the legislature, is familiar enough to students of English constitutional history and of parliamentary procedure, although it will come as a surprise to many students to learn that it was within the memory of men now living that the house established a systematic and comprehensive plan for controlling expenditures—for assuring itself and the nation that the money it had appropriated in committee of supply was economically expended on the services for which it was voted.

The office of comptroller and auditor-general, and the committee on

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public accounts, both established as recently as 1866, serve the house of commons in the capacity of watch dogs of expenditures. The functions of each of these institutions and their value in the British financial system are brought out with much clearness in the Willoughby-Willoughby-Lindsay report. But as has been stated, most detailed attention is bestowed on the treasury, and its day by day service as the general business manager and agent of parliament. The treasury is clearly distinguished both from the house of commons and from the various departments of state grouped about it at Whitehall. It is presented as a living institution. Its close supervision over policies and expenditures becomes vivid and actual in the Willoughby-Willoughby-Lindsay pages; and although there is nowhere a reference to the institution known at Westminster and Whitehall, and wherever expenditures of public money are made, as "the treasury conscience," the existence of this intangible but highly valuable factor in British administration economy is evident on many of these pages. The treasury conscience at Whitehall counts for much more than many Englishmen ever realize. But it is not a transplantable institution. It has not invariably gone in the train of British institutions when they have been transplanted oversea. The treasury conscience for instance, has not yet permeated political and official life at Ottawa as it has long permeated political and official life at Westminster. Public opinion in England supports the treasury conscience. It is a factor that counts for economy and efficiency. It has admittedly helped in weeding out corruption, individual corruption and the corruption of constituencies through pork barrel appropriations; and the existence of these two beneficent forces—the treasury conscience and public opinion that demands what the treasury conscience stands for—have to be constantly kept in mind in reading Messrs. Willoughby, Willoughby and Lindsay's restrainedly expressed eulogies on the working of the system which they describe as "one of the most efficient that has been devised by any nation for the management of its national finances."

EDWARD PORRITT.

Hartford, Conn.

Standards of American Legislation. By ERNST FREUND. (Chicago: University of Chicago Press. 1917. Pp. xx, 327.)

This is one of those welcome books which encourage political scientists to believe that their science is a genuine science. Before attempt-

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ing to construct any legislative standards, Professor Freund differentiates policy from principle in legislation. In his chapter on "The Meaning of Principle in Legislation" he writes: "While principle in common law simply stands for logic, reason, and established policy, its meaning in legislation is far more complex. We can hardly say more to begin with than that it means a settled point of view, and any closer analysis requires careful discrimination. At the opposite ends of the various classes of considerations that move the legislator we should place constitutional requirements and policy. The constitutional rule must be obeyed no matter what opinion may be entertained of its wisdom. . . . Policy, on the other hand, represents the freedom of legislative discretion. . . . Principle, as applied to legislation, in the jurisprudential sense of the term, thus does not form a sharp contrast to either constitutional requirement or policy, for it may be found in both; but it rises above both as being the ideal attribute demanded by the claim of statute law to be respected as a rational ordering of human affairs." Professor Freund's purpose is to estimate the factors by the aid of which a system of constructive principles of legislation may be built up. This purpose distinguishes his book at once from such an excellent treatise as Jethro Brown's *The Underlying Principles of Modern Legislation*, which deals, not with principles of legislation as Professor Freund defines the term, but with policy, and from Chester Lloyd Jones's valuable *Statute Law Making in the United States*, which deals exclusively with legislative practice.

The first chapters of the book are devoted to a preliminary survey of historic changes in the law and to a consideration of the common law as a system of public policy. It appears that the prevailing concepts of principle are mainly due to judicial action, and that these concepts, so far as embodied in the common law, and to some extent in modern constitutional law, are, under modern conditions, subject to serious shortcomings. In recent years particularly the uncertainty exhibited by the courts in dealing with social legislation, and generally in the application of the "rule of reason," has caused popular discontent with this feature of their work. As Professor Freund finely says: "The criterion of reasonableness may be the only one available; but if so, it means that adequate scientific or conventional tests have not yet been developed. To oppose legislative discretion by undefined judicial standards is to oppose legislative discretion by judicial discretion, and constitutional doctrines so vaguely formulated cannot be

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expected to command confidence." The demand for the recall of judicial decisions was the popular reaction to the growing recognition that the courts were exercising a political, rather than a judicial function, and were exercising it on the whole not too well. Professor Freund evidently would not advocate the piling of checks on checks as was done by the advocates of the recall. Instead he pleads powerfully for the further development of the principles of legislation. But the reader will not be surprised when he discovers, towards the end of the volume, that the author does not put a high estimate on the value of the courts as a constructive factor in the development of principle.

Most interesting to the student of government rather than of jurisprudence is the treatment in the final chapter of legislative practice as a constructive factor. He points how, in European countries in which legislation is entirely uncontrolled by the courts, its quality is, generally speaking, higher than it is in America. It is more likely to provide a proper adjustment between vested private interests and the public interests, to avoid unwisely indefinite penal provisions, to reveal a proper correlation of provisions, and to show due consideration for the principle of standardization. This technical superiority he ascribes mainly to the practical monopoly of legislative initiative possessed by the executive branch of the government. He consequently advocates increased executive participation in American legislation. In particular he suggests the further development of the practice of entrusting special commissions with the preparation of bills, the delegation of further powers to administrative commissions, the organization of drafting bureaus, and the codification of standing clauses. He also suggests that the chief executives be granted the right to introduce bills into the legislatures and to be represented in the debates thereon. These suggestions are not new, but the treatment is fresh and stimulating. The book as a whole is an admirable piece of work. It cannot fail to give a strong impetus to the growing interest in and respect for the science of legislation.

A. N. Holcombe.

Harvard University.

Studies in the Problem of Sovereignty. By Harold J. Laski. (New Haven: Yale University Press. 1917. Pp. 297.)

This work constitutes an important contribution to the literature of that brilliant school of political writers who are forging for us a new

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and more satisfacotry theory of the nature of the state. It should be read especially in connection with Maitland's classic introduction to Gierke's *Political Theories of the Middle Ages*, and Figgis's *Churches in the Modern State*. In essence this theory is that the state is a corporate personality, and as such shares the nature of other corporate persons. It involves a theory of the nature of corporations which is slowly gaining recognition among jurists, and is championed in America by Professors Ernst Freund and Roscoe Pound; that group-units are real and not fictitious persons, and that their character as persons is not derived by concession from the state but springs from their possession of a unified and corporate will. Thus unincorporated associations, as trade unions, are coming to be recognized as possessing corporate character, as being juristic persons, and hence the subjects and objects of rights, because they possess such a unified will. The state is viewed as merely a species of this wider genus of corporation.

Upon this general foundation, Figgis and Laski have built their doctrine of the limitations of state sovereignty. They have been primarily interested in showing that since the state is merely one among many other group-units, since these others exist independently of it and command the allegiance of their members in exactly the same way as the state commands the allegiance of its subjects—viz., on the ground of common consent—there are spheres of rights which these enjoy which must not be invaded by the state. Its sovereignty is limited by the rights which churches, for example, possess. These are sovereign within their appropriate spheres as it is within its sphere. Nor does the state possess what the Germans call *Kompetenz-Kompetenz*, the power to delimit the competence of subordinate authorities. Rather is this determined simply by the ability of the one or the other authority to command support for its mandates.

Obviously the implications of this doctrine are very far reaching. Not only does it means an abandonment, or at least a serious impairment of the theory of the sovereignty of the state, but it involves the revival of the eighteenth century doctrine of natural rights, now, however, attached to group-units instead of to individuals.

The material upon which Figgis and Laski have both principally drawn for demonstration of their postulates is the ecclesiastical history of the nineteenth century. Laski has utilized for his purpose most successfully the disruption of the Scotch Church (1843), the Oxford Movement, the Catholic revival in England, the Catholic reaction in France following the French Revolution of which De Maistre was the

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chief apostle, and the *Kulturkampf* in Germany. Erastianism in each of these cases is perceived to be the necessary outcome of a high theory of state sovereignty, and any theory of the state which involves its right to interfere with men's consciences must, it is held, be fallacious. One is forcibly impressed with the fact that political theory even today springs in no small degree from the relations of church and state.

Whether in every particular these ideas will withstand the effect of criticism, there is no doubt that they offer in some respects a much better explanation of contemporaneous political tendencies and movements than the Hegelian theory that the state is an all-inclusive metaphysical organism, which governs the practical politics of modern Germany.

WALTER JAMES SHEPARD.

University of Missouri.

The Leveller Movement. A study in the History and Political Theory of the English Great Civil War. A dissertation submitted to the faculty of the Graduate School of Arts and Literature, University of Chicago. By THEODORE CALVIN PEASE. (Washington: American Historical Association. 1916. Pp. x, 406.)

George Thomason, the indefatigable collector and arranger of the priceless collection of civil war tracts now in the British Museum, tells us that this "chargeable and heavy burthen . . . . continued about the space of twenty years, in which time I buried three of them who took great pains both day and night with me in that tedious employment."

Any one who has ever dipped, though never so slightly, into this enormous mass of over twenty-two thousand crabbed controversial pamphlets, can appreciate the "chargeable and heavy burthen" also involved in the careful analysis of the Leveller movement here given us by Mr. Pease, and the debt we owe him in consequence. It is a very solid and valuable contribution to history and political science, and much the most detailed and thorough study we have of the political theory of probably the most interesting group in a most momentous period—a task well worth doing.

The Levellers were merely a number of agitators and pamphleteers and their followers, whom their enemies slightingly and rather loosely designated by that name; but Mr. Pease clearly shows that they were

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none the less a real, though a small, party consolidated and marked off from others by their common belief in "the supremacy, not of government, nor a branch of government, but of law"—a supremacy, moreover, not based like Cromwell's upon force, nor upon the exclusion of all save the "saints," whether Presbyterian or Independent, but one to be secured only "by convincing the people of the excellence of certain political principles." These certainly were "valuable contributions to the world's stock of political ideas and political experience," and the author makes no extravagant claim when he says they are of the first importance "for both English and American constitutional history."

These principles Mr. Pease believes may be traced to two sources, "the ancient theory of the English constitution as fundamental law, and the ecclesiastical policy of the Independents;" and in the elaboration of them, the Levellers "evolved the idea of a written constitution of paramount law as a limitation on the power of government. They devised machinery whereby the sovereignty of the people might express itself in the framing and acceptance of such written constitutions. Carrying their concept of government by law to its extreme, they designed the enforcement of their constitutions like all other laws, through the courts. Lastly, for spreading their principles they designed a democratic party organization that suggests the committee of correspondence of the American Revolution." These high claims Mr. Pease has abundantly substantiated, but it is possible that he has somewhat overstated the influence of the Levellers on the growth of the judicial review of legislation.

The author's long continued immersion in such English as Wildman's may be the explanation of a few such lapses as these: ". . . . can make the most rambling paragraph climax with a crack like a whip-lash;" "yet with all his naïveness;" "a government bound by paramount law from endangering their liberties;" "his part in the Leveller movement is easier underestimated than overestimated;" "The other 'corrupt interests' of the Kingdom . . . . were all sheltering with the Rump."

To this essay was awarded the Herbert Barton Adams Prize in European History by the American Historical Association in 1915.

C. H. McIlwain.

Harvard University.

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Public Opinion in Massachusetts during the Civil War and Reconstruction. By EDITH ELLEN WARE. (Columbia University Studies in History, Economics, and Public Law. 1916. Pp. 219.)

The justification for a detailed study of this topic by Dr. Ware is found in a letter quoted from Robert C. Winthrop to Judge Clifford: "I cannot but regret that our state is put forward so prominently. Sumner at the head of foreign affairs, Wilson at the head of military affairs, Butler commanding one wing, Banks commanding another wing, Adams Minister to London, Burlingame to Pekin, Motley to Vienna . . . ."

By influence and reputation Massachusetts is ranked as a strong Republican state; but political opinion is never expressed perfectly by the majority. It is thus Dr. Ware's purpose to estimate the strength of the minorities and their reasons for opposition. Her conclusions, that during the civil war public opinion was "for the support of the administration in the preservation of the Union, through emancipation, if need be, although emancipation was for the most part a subsidiary issue;" and that during the reconstruction period opinion was for "the support of the victorious party, which is to say the Republican party;" and that "in neither period was there unanimity of opinion;" do not alter the generally accepted judgment. The monograph is valuable rather in that it gathers together and portrays the almost daily registration of opinion and shows how the leaders and the press stood on the crises which occurred. Thus the chapter "The Defense of the Union" vividly shows how the hesitancy and critical opinion described in "The Election of 1861" and "The Period of Secessions" were so precipitated that even the Boston *Courier*, which was "anti-Republican, anti-administration, anti-war and sometimes anti-union," could declare, "there will be no more talk about rights or wrongs; that day is happily past. . . . Hereafter *we act.*" The chapter on "Emancipation" traces the growth of the movement, from the nine persons who founded the *Liberator* to the conversion of the majority to the belief that emancipation would hasten the end of the war. In "Copperheadism," which is defined as a movement to supplant the administration and reverse its policies, are discussed both the turbulence and the skillful acceleration of public opinion together with the political organizations of that period. The chapter on "Reconstruction" discusses the various theories held by different groups and

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shows how the Republican Party, through the rise of Butler, and by concentrating upon national issues while ignoring state questions, lost the governorship in 1876. There is an excellent, though brief, essay upon "The Press of Massachusetts during the Sixties."

The monograph shows infinite pains in exhausting every possible source of information and great accuracy of quotation and is impartial in tone. It is, what it professes to be, a study of but one phase of Massachusetts history and makes no attempt to present a complete picture.

ERNEST KIMBALL.

Smith College.

The County—The "Dark Continent" of American Politics. By H. S. GILBERTSON. (New York: The National Short Ballot Organization. 1917. Pp. vi, 297.)

While the day of municipal reform in America is well advanced, the dawn of reform in county government is just breaking. Recently, the county, the long neglected unit of government, has begun to receive a portion of the attention which its importance deserves. Since 1910, when the American Political Science Association gave the county a place on the program of its annual meeting, a number of valuable studies of the county have been made. The National Municipal League has embraced the county within the scope of its interests. The *American City* publishes a "Town and County" edition. Conferences for better county government have been held; and the short ballot organization has adopted the reorganization of the county as one of its chief aims.

The work under review by H. S. Gilbertson, secretary of the New York short ballot organization, is the first attempt to set forth within the covers of a single book "the outlines of a very real and important 'county problem.'" The purpose of the work, as stated in the preface, is to stimulate a "much wider and more thorough research into the subject than has yet been attempted" and "to throw a new light upon the 'democratic experiment' in America."

Within the first 119 pages the author presents his "indictment of the county." This is followed (86 pages) by a constructive program of county reform. An appendix of 77 pages contains a number of valuable constitutional and legislative documents relating to county government.

The county is tested by the principles "of the reconstructive demo-

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cratic movement in America in the last fifteen years;" namely, the elimination of irresponsible boss rule, pitiless publicity, simplified organization, centralized power and fixed responsibility. The test results in the following indictment: "Counties are the cornerstone of the system of partisan government and organization." They have "created and sustained machine politicians." They harbor a "long ballot . . . . the father of irresponsible organization." While looking after the interests of "the boys" in the "organization," they have wofully failed to meet the humanitarian needs with regard to health, safety, charities and correction, and good roads. Laws left to their enforcement have been nullified with impunity. Such evils are especially prominent in urban counties, which often bear the added burden of special state legislation.

The evils set forth in the foregoing indictment the author would eliminate through the following reforms: state supervision of accounting, reporting, auditing, assessment of taxes, and enforcement of civil service regulations; the "complete reorganization of the state judicial system upon the principle of responsibility" accompanied by the elimination of the elective county judge; the transfer to the state of penal and charity functions, guardianship of life and property, and the execution of a good roads program; consolidation, in urban centers, of the city and the county governments; the granting to the county of home rule privileges; and the creation of the position of "county manager" to provide expert administration for the business of the county.

The author's indictment of the county carries conviction. His proposed surgical operation on the county commends itself. But in the opinion of the reviewer, a program of public service more positive than that outlined by the author must be provided before "the county of the future," divested of many of its present functions, will be able to draw to itself that degree of public attention necessary for efficient popular government.

Historians will disagree with the author's statement on page nine that a federation of towns in Massachusetts and Connecticut "produced the general government." A more careful proof reading would have eliminated a number of typographical errors.

A comprehensive bibliography and an adequate index enhance the value of the book. On the whole the author has proved himself a courageous and reliable "pathfinder" in the exploration of the Dark Continent of American politics.

Orren Chalmer Hormell.

Bowdoin College.

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Essays in the Earlier History of American Corporations. By JOSEPH STANCLIFFE DAVIS, PhD. Two volumes. (Cambridge: Harvard University Press. 1917. Pp. 546, 419.)

In the preface the author presents this group of studies as "a modest contribution to the economic and social history of the United States before 1800." But it may well be called an important contribution, of value to the student of political institutions as well as to those interested in other phases of economic and social history.

The first volume includes three essays (each containing from 5 to 8 chapters): on Corporations in the American Colonies; William Duer, Entrepreneur, 1747–99; and The "S. U. M.:" the First New Jersey Business Corporation. The second volume is a more extended essay on Eighteenth Century Business Corporations in the United States. In each volume there are appendices of useful illustrative material, and the second volume has an extensive bibliography. The work as a whole represents a comprehensive, if not an exhaustive, treatment of the topics considered; and should form an authoritative source of information.

Students of political science will be most interested in the first and fourth essays. The first deals with the legal basis of corporate powers, colonial corporations chartered in England, and public and private corporations chartered in the colonies. Most of the dozen chartered in England were the original colonizing undertakings or had to do with the government of a colony. Corporations chartered in the colonies were most prolific in the middle group; no full fledged public corporations were chartered in New England (except the short lived city of Acomenticus, alias York, and the Boston Overseers of the Poor); and apparently no private corporations were chartered in Maine, Delaware, Maryland and North Carolina. The most common method of incorporation was by charter from the governor with the approval of the council or assembly; but in some colonies corporations were established by act of the assembly.

The eighteenth century business corporations were for the most part for financial or public utility purposes—including banking, inland navigation, toll bridge, turnpike, insurance and water supply companies, with a few manufacturing and miscellaneous corporations. Corporations established after the Revolution were almost entirely organized under special acts of the state legislatures. In several instances charters were repealed or altered. The earliest charters were granted substantially in the form submitted by the applicants; and the

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legislatures generally displayed a favorable attitude towards the corporations. Exemptions from taxation and lottery privileges were granted in a number of cases; powers of eminent domain were granted to highway companies; and the legislatures frequently responded to appeals for loans or subscriptions.

J. A. F.

The Rule Making Authority in the English Supreme Court. By SAMUEL ROSENBAUM. (Boston: Boston Book Company. 1917. Pp. xiv, 321.)

Delegation of the power to make the rules governing the trial of the cases brought before them to the judges of the supreme court working with members of the legal profession, has been a feature of British jurisprudence since 1875 and has been less thoroughly adopted in most of the British colonies. Mr. Rosenbaum undertakes a description of the development of the rules now in force and of their content. The material first appeared as articles in law magazines and the subsequent editing has not eliminated references to local conditions and practice justified only in the original publication. There are frequent comparisons between English and American methods of rule making to the disadvantage of the latter though no analysis of these is presented. We are left to believe that the case of Pennsylvania where, we are told, "an omniscient legislature . . . . in occasional moments of respite from the tasks of social reform . . . . hammers out by way of change, a rule or two for the courts," is typical of American conditions.

The volume falls into three parts, the first 150 pages describe the rise of the demand for authority for the courts to make rules and the rules the courts have made. An analysis of the reasons for each advance is given and the contents of the measures adopted are analyzed at length. This work is carefully done, but the mass of detail gives the discussion the characteristics of a table of contents and obscures the broad outlines of development.

Fifty pages are then devoted to an analysis of the rules now in force on the basis of their content. This offers the author the best opportunity for analysis and is by far the best portion of the volume. The rules adopted are shown to fall into three general classes. First, those intended to counteract certain decisions the author considers to involve authority not definitely contemplated, but exercised without

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question since 1883; second, there are those creating new procedure, the true semi-legislative authority originally contemplated by the action of parliament, and rules issued for the operation of certain acts of parliament, the duty of drafting the rules being specifically put upon the court by parliament. This is an example of the tendency to put the making of legislative detail into the hands of non-legislative bodies. Third, there are administrative rules concerning the actions of the court and the persons appearing before it.

The volume closes with a discussion of the extension of the practice of letting the courts make their own rules with or without the coöperation of the legal profession, of the county courts and of the various legal systems found in the colonies and India. In these latter the degree of freedom of action granted the courts varies, and regulation by the legislature not infrequently supplements the action taken by the courts.

CHESTER LLOYD JONES.

University of Wisconsin.

Business Competition and the Law. By GILBERT H. MONTAGUE. (New York: G. P. Putnam's Sons. 1917. Pp. 309.)

This book is written by a lawyer. There is internal evidence that the author has a considerable if not a large practice in advising business men what acts are and what are not illegal under the Sherman act and other similar statutes. He testifies that he is qualified to speak "from a considerable study of the multitudinous court decisions in anti-trust cases." The book, we are told, is written not for lawyers but for business men. The purpose in writing seems to be rather to induce terror than to produce light. At the outset the small business man is warned that he as well as the great combination is marked for slaughter. All are informed that the government is not "letting up" when it comes to a scrutiny of the methods of competition in business. There are hidden terrors in acts which are themselves innocent. There are terrors in mere inaction. The cost of defending a government suit is so great that the smaller business men submit to consent decrees so that business is run not the way the judges say it must be but the way the attorney-general says it shall be. What the government has condemned makes a fresh list of terrors for the business man. Almost everything that is done in the way of business competition may be offensive. Even if a business has patents behind it, it is dangerous to threaten infringement suits, and reliance upon patents to avoid the

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anti-trust law is often futile. Joining a trade association is dangerous. Even the now popular device of open competition is not above suspicion.

There would seem to be only one course for the business man to take after he has read this book. He should employ a lawyer who specializes in what is and what is not lawful competition. If, however, Mr. Montague knows no more about the true course to steer than he reveals in his book, there is no reason why the business man should employ him. If Mr. Montague knows more than he has revealed, then the Bar Association might well take up the question of the propriety of conduct of a lawyer-author who seeks only to produce panic when he could give light.

ALBERT M. KALES.

Harvard Law School.

The Man in Court. By FREDERICK DEWITT WELLS. (New York: G. P. Putnam's Sons. 1917.)

This book initiates the layman into the mysteries of every day (and night) court procedure; admonishes the reformer to blame the law, not its officers; and heartily amuses the trial lawyer. The court, judge, jury, lawyer, witness and client are each depicted as they actually reveal themselves in their wholly human qualities. Nobody is spared, yet no one is treated unkindly. Not so, however, the technique of the law; that, it seems, is "antiquated;" and "looking backward" from the year 1947 we find that "judicial corporations" have swept away the old courts and senseless procedure, and have specialized everything into departments of mid-paradisian efficiency. Judges, lawyers and physicians have merged into "men of business."

To the quasi-trial lawyer, the book's most laugh-fetching paragraph is perhaps that which, in dealing with "elocution" to the jury, reads: "The client watches the (his) lawyer with affectionate admiration. True, he (the lawyer) did not do exactly as he was wanted during the trial. He should have asked those questions he (the client) suggested, but now he is doing splendidly. . . . With such a good talker the jury cannot fail of being convinced."

The author unobtrusively reveals intimate experience with human beings, depth of psychological insight, broad sympathy, healthful humor; a desire for, a belief in, and a capability of bringing nearer, better things to come.

W. S. MCNEILL.

Richmond, Va., Law School.

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MINOR NOTICES

The Menace of Japan (Boston: Little, Brown and Company, 1917, pp. 372) by Frederick McCormick, American newspaper correspondent in Peking, purports to be an intensive study of the politics of the Far East during the past decade. Its thesis is easily stated: Japan is a menace to China's sovereignty, to the economic interests of the European powers and the United States in Chinese territory, and to the peaceful future of all the powers bordering on the Pacific, because her ambition for expansion is unlimited and her conduct in pursuing her self-appointed destiny is not hampered by any recognition of the principle of nationality. From the statement of the case as spread upon the pages of his book the author concludes that war between the United States and Japan is certain to come unless the United States will make such a demonstration of force as to compel Japan to settle the problem of the Pacific in the "light of understanding and mutual respect."

The American reader will find himself drawn to the author because of his hearty interest in preserving and extending American interests in the Far East, perhaps even more so because of his generous sympathy with China in her struggles against a "predatory" world. The European reader, whether English, French, or Russian, will doubtless be offended by the way in which his country is referred to either as the unwitting tool of Japan, the leader of the "predatory pack," or as its guilty accomplice. All readers alike, who have the enterprise to continue to the end (for it takes no little patience to read a book which is written so faultily as this one), will find their reward in a disquieting impression that Japan is worth watching for her felonious intent toward China and the United States even though they are not persuaded of her power to accomplish her piratical aims.

Distinguishing between fact and fiction in books upon the politics of the Far East is no easy task, even when the author cites his sources of information; in this book it becomes impossible, except to the expert student; for Mr. McCormick informs us in his preface that "many things contained herein . . . . . cannot be publicly ascribed to their sources . . . . . many are simply extracts from my own journals and private records." The author's rabid anti-Japanese bias casts suspicion, if not upon his facts, at least upon the soundness of his judgment. As the reader passes from one chapter to another he becomes convinced that he is in the presence of a propagandist, not a sober historical writer.

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The reviewer wonders whether Mr. McCormick is entirely satisfied with the immense preparations now being made in this country forcibly to make the world a fit place for democracy to live in and grow. Does he suppose that the President's term "democracy" includes China as well as Belgium and France? Does he attribute the Terauchi cabinet's remarkable change of policy toward China to the growth of America's military and naval forces? Would he admit that the menace of Japan was being removed by events which have occurred in the United States since April 6?

The Albert Shaw Lectures recently delivered at Johns Hopkins University by Prof. Payson J. Treat of Stanford University will be published by the Johns Hopkins University Press under the title, *The Early Diplomatic Relations between the United States and Japan, 1853–1865.*

Volume II of a series of volumes on *The Great War,* by Prof. George H. Allen of the University of Pennsylvania, Captain Henry C. Whitehead, U.S.A., and Admiral F. E. Chadwick, U.S.N. (George Barrie's Sons, 494 pp.), deals with The Mobilization of the Moral and Physical Forces. This is a rather bulky volume, with maps and numerous illustrations, evidently intended for the general reader rather than the serious student.

Hon. Henry Cabot Lodge, United States senator from Massachusetts, has published under the title *War Addresses* (Houghton, Mifflin Company pp. 303) a selection from his speeches during the last two years. Some of these addresses are of great interest and value to students of public affairs, as for example the speech on "Armed Merchantmen," delivered in the senate on February 18, 1916. All of them deal with topics of present day interest and all are of sufficient merit to warrant their preservation for readers of a future generation.

Many matters of distinctly current interest are discussed in Lucien Howe's *Universal Military Education* (G. P. Putnam's Sons, 138 pp.). There are summary descriptions of the Swiss and Australian systems, but the greater part of the volume is devoted to a careful consideration of the merits and the disadvantages of universal military education in the United States. The author puts his data in nutshells and presents his opinions in no uncertain terms. Whether one agrees with his opinions or not there is no gainsaying the fact that Mr. Howe has expressed them with brevity, clearness and vigor.

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Patriots in the Making is the title of a volume by Dr. Jonathan French Scott of the University of Michigan (D. Appleton and Company, 263 pp.), in which the writer discusses the forces in the educational systems of continental countries so far as they affect the psychology of defense. There is an excellent general chapter on "Military Training in Europe," and in the appendix are some interesting data relating to the military system of the Swiss republic. The author pleads for a discrimination in the United States between the sort of education which makes for proper patriotism and that which leads only to a narrow nationalism. The book is written in a terse and readable style.

The commission which was appointed some months ago to compile information and data for the use of the Massachusetts Constitutional Convention has printed a series of bulletins dealing with some of the more important matters that are likely to come before the delegates. Among those already issued are bulletins relating to *The Procedure of Constitutional Conventions, State Budget Systems, The Initiative and Referendum, Muncipal Home Rule, The Pardoning Power, The Governor's Council, Biennial Sessions, Old Age Pensions,* and *County Government.* Other bulletins will be ready shortly. The office of the commission is at the State House, Boston.

The thirty-seventh general assembly of Iowa at its recent session requested Dr. Benj. F. Shambaugh, professor of political science at the state university of Iowa, to compile an "Iowa Manual of Legislative Procedure." In accordance with this request, a manual of two hundred and twenty-three pages, including the standing rules of the general assembly and a comprehensive index, was compiled and published for the use of the members of the two houses. One hundred and thirty-one pages of the volume are devoted to a discussion of legislative procedure and practice in Iowa. This constitutes one of the few attempts that have been made in the United States to codify the procedure and practice of a state legislature.

An important contribution to the comparative study of municipal government is *El Regimen Municipal de la Ciudad Moderna,* by Prof. Adolfo Posada of the University of Madrid. This includes an analysis of political, economic and sociological factors, with chapters on municipal autonomy and democracy, and municipal government in Prussia, England, France and the United States—the latter dealing with

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the newer forms of commission and manager government, as well as with the older types. Following the main part of the book is a brief summary of the machinery of local government in Spain, France, England, Prussia and the United States, with select lists of bibliographical references.

Municipal Ownership, by Carl D. Thompson (B. W. Huebsch, 114 pp.), is avowedly a plea for the municipalization of public utilities in this country. The writer's method is to jumble together a medley of facts and figures which seem to favor his side of the argument, wholly neglecting all that may be said on the other. Some of the statistics are too antiquated to be of any value whatever, as for example those which have been so freely drawn from Professor Frank Parsons' "City for the People," a book published more than sixteen years ago. Errors of statement are not infrequent, moreover, and the style of writing leaves much to be desired.

The two latest volumes in the National Municipal League Series are *Municipal Functions*, by Prof. Herman G. James of the University of Texas, and *Town Planning for Small Communities*, by Charles S. Bird, Jr., of East Walpole, Mass. The former represents an attempt to cover "the whole range of major activities in cities" and thus to supply a "lack in the textbook field." The latter contains some general discussions but is in the main devoted to an exposition of what has been planned and accomplished in the author's own community, largely, it may be added, as the outcome of his own vigorous leadership.

A small book on *The Building of Cities*, by Harlean James (The Macmillan Co.), gives a series of conversations intended to interest children in the problems of city planning.

The Taxation of Land Value by Yetta Scheftel (Houghton, Mifflin Company, 488 pp.) is the newest and in many respects the best study of what is commonly known as the single tax. The earlier chapters deal with the systems of land taxation in the Australian states, the tax on value increment in Germany, the English land-value duties and the municipal tax systems of the western Canadian provinces. Then follow careful discussions of the tax upon land values as a source of revenue and as an instrument of social reform respectively, with a concluding chapter on the expediency of laying such taxes in this country. An excellent bibliography is appended.

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A new edition of Hugh Bancroft's *Inheritance Taxes for Investors* (revised to January 1, 1917) has come from the press (Houghton, Mifflin Company, 133 pp.). While originally written for investors, the book has proved useful to attorneys and to students of our multiform tax laws.

Several lectures delivered by Prof. William Cunningham of Cambridge in the London School of Economics two years ago are now printed as *The Progress of Capitalism in England* (Cambridge: The University Press, 144 pp.). Much material of great interest to students of economic history is presented in brief compass, particularly in the second part of the book which deals with "The Progress of Capitalism in Mediaeval Cities." A concluding chapter is devoted to pointing out the "Lessons from Experience." A short bibliography of the subject is added.

The Journal of the National Institute of Social Sciences for 1917 contains papers and addresses upon a wide range of subjects from "The Policeman of Today," by Commissioner Arthur H. Woods of New York City, to "The New Geology," by F. Bascom. Students of municipal affairs will be interested in the group of three papers on aspects of the government of New York City which appears on pages 166 to 183.

Henry F. Wolff's *Coöperative Credit for the United States* (Sturgis and Walton, 349 pp.) follows the same general lines as the author's earlier works on such allied subjects as *Coöperative Credit Banks* and *Coöperation in Agriculture*. These earlier books were, however, primarily written for British readers, while the present volume aims to impress upon the reading public of America the great value of cooperative credit both as a productive factor in the national life and as a creator of diffused individual wealth. The author does not waste his pages in any discussion of principles or theories; he sets out to show just how the agencies of coöperative credit are organized and managed. The book will be of great value to those who want to learn the practical workings of the system abroad and the adaptability of these plans to American conditions.

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RECENT PUBLICATIONS OF POLITICAL INTEREST

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University of Illinois

AMERICAN GOVERNMENT AND PUBLIC LAW

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Order in council of March, 1915, provides for the bringing into British ports of neutral vessels "in order that the belligerent may be satisfied as to the character, ownership, destination, or origin of the cargo which they carry."

Prisoners of War and interned civilians in Germany, Further correspondence with the United States Ambassador respecting the treatment of British. Miscellaneous No. 7 (1917) [Cd. 8477.] Price 3d. 1917. 29 p. fol. *Foreign Office.*

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Reconstruction Committee. Part I. of the report of the agricultural policy sub-committee appointed in August, 1916, to consider and report upon the methods of effecting an increase in the home-grown food supplies, having regard to the need of such increase in the interest of national security. [Cd. 8506.] 1917. 32 p. fol. *Board of Agriculture amd Fisheries.*

State Papers, British and foreign. 1913. Vol. CVI. 1916. 1204 p. 8°. Price 10s. *Foreign Office.*

Trade Corporation, British. Copy of the petition of promoters, the deed of settlement, and the royal charter of incorporation. [Cd. 8567.] 1917. 29 p. fol. Price 3d.

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War Savings Committee, National . . . First annual report—March 1, 1917. [Cd. 8516.] 1917. 18 p. fol. Price 3d. *Treasury Department.*

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Women's War Work in maintaining the industries and export trade of the United Kingdom. Information officially compiled for the use of recruiting officers, military representatives and tribunals. 1916. London. 93 p. fol. Price 1 shilling. *War Office.*

Contains list of trades and processes in which women are successfully employed in temporary replacement of men and photographs of women workers illustrating the successful employment of women in temporary replacement of men.

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Cost of living in the Union, Report of the special commissioner appointed by the government to enquire into the. Cape Town. 1916. 32 p. fol. Price 1s, 6d.

Provincial Administration Commission, Reports (majority and minority) of the. Cape Town. 1917. 58 p. fol. Price 1s., 9d.

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Retrenchment in Public Expenditure, Report of Committee on. Cape Town. 1917. 19 p. fol. Price 1s.

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